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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No. 54

THE UNITED STATES OF AMERICA, Petitioner

vs.

JOSEPH RUZICKA AND CHARLES RUZICKA, INDIVIDUALLY, AND AS CO-PARTNERS TRADING AS SEELEY DAIRY

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR CERTIORARI FILED MARCH 7, 1946

CERTIORARI GRANTED APRIL 22, 1946

IN THE

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE SEVENTH CIRCUIT.

No. 8759

THE UNITED STATES OF AMERICA,
Plaintiff-Appellee,

vs.

JOSEPH RUZICKA AND CHARLES RUZICKA,
Defendants-Appellants.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION.

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3 Pleas had at a regular term of the District Court of the United States for the Eastern Division of the Northern District of Illinois begun and held in the United States Court Rooms in the City of Chicago in the Division and District aforesaid on the third Monday of December (it being the 18th day thereof) in the year of our Lord One Thousand Nine Hundred and Forty-Four and of the Independence of the United States of America the 169th year. Placita

Present:

Hon. John P. Barnes, District Judge.
Hon. Philip L. Sullivan, District Judge.
Hon. Michael L. Igoe, District Judge.
Hon. William J. Campbell, District Judge.
Hon. Walter J. LaBuy, District Judge.
Hon. Elwyn R. Shaw, District Judge.
Hon. William H. Holly, District Judge.

Roy H. Johnson, Clerk.
William H. McDonnell, Marshal.

Friday, October 16, 1944.
Court met pursuant to adjournment.

Present:

Honorable Michael L. Igoe, Trial Judge.

Placita 4 Pleas had at a regular term of the District Court of the United States for the Eastern Division of the Northern District of Illinois begun and held in the United States Court Rooms in the City of Chicago in the Division and District aforesaid on the Third Monday of December (it being the 18th day thereof) in the year of our Lord One Thousand Nine Hundred and Forty-four and of the Independence of the United States of America the 169th year.

Present:

Hon. John P. Barnes, District Judge.
Hon. Philip L. Sullivan, District Judge.
Hon. Michael L. Igoe, District Judge.
Hon. William J. Campbell, District Judge.
Hon. Walter J. LaBuy, District Judge.
Hon. Elwyn R. Shaw, District Judge.
Hon. William H. Holly, District Judge.

Roy H. Johnson, Clerk.
William H. McDonnell, Marshal.

Friday, October 20, 1944.
Court met pursuant to adjournment.

Present:

Honorable Michael L. Igoe, Trial Judge.

5 IN THE DISTRICT COURT OF THE UNITED STATES. Filed Sept. 15, 1942
Northern District of Illinois
Eastern Division

United States of America
vs.
Joseph Ruzicka, Frank Ruzicka and Charles Ruzicka, individually and as co-partners, doing business under the trade name of Seeley Dairy. } Civil Action No. 4670

Be It Remembered, that the above-entitled action was commenced by the filing of the following Complaint in the above-entitled cause in the office of the Clerk of the District Court of the United States for the Northern District of Illinois, Eastern Division, on this the Fifteenth day of September, A.D. 1942.

6 IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois
Eastern Division
(Caption—Civil Action No. 4670)

COMPLAINT.

Plaintiff, by J. Albert Woll, United States Attorney in and for the Northern District of Illinois, acting under the direction of the Attorney General, upon request of the Secretary of Agriculture of the United States, brings this action under Title 7, U. S. C. A., Section 608a(6); Section 8a(6) of the Act of May 12, 1933 (48 Stat. 31), as amended May 9, 1934 (48 Stat. 670, 675), as further amended August 24, 1935 (49 Stat. 750), and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, approved June 3, 1937 (50 Stat. 246) (The said Act of May 12, 1933, as reenacted and amended, Title 7, U. S. C. A., Section 601 *et seq.*, being hereinafter referred to as the "act"), vesting the several district courts of the United States with jurisdiction specifically to enforce, and to prevent and restrain any person from violating any order issued by the Secretary of Agriculture of the United States pursuant to the provisions of Title I of said act, and alleges:

7

II.

The defendants, Joseph Ruzicka, Frank Ruzicka and Charles Ruzicka, are inhabitants of the City of Chicago, County of Cook, State of Illinois, and are, and at all times herein mentioned were, copartners doing business under the trade name of Seeley Dairy, with their principal place of business at 4754 South Seeley Avenue, Chicago, Illinois.

III.

This proceeding is brought to enforce the provisions of Order No. 41, Order No. 41, as amended, effective July 1, 1940, Order No. 41, as amended, effective July 1, 1941, and Order No. 41, as amended, effective July 1, 1941, and as further amended by Amendment No. 1, effective September 6, 1941, issued by the Secretary of Agriculture of the United States (hereinafter called the "Secretary"), regulating such handling of milk in the Chicago, Illinois, marketing area (hereinafter referred to as the "marketing area"), as is in the current of interstate commerce, or as directly burdens, obstructs, or affects interstate commerce in milk or its products, and to prevent and restrain the defendants from handling milk or its products in violation of the provisions of said Order No. 41, as amended, effective July 1, 1941, and as further amended by Amendment No. 1, effective September 6, 1941.

IV.

Order No. 41 was issued by the Secretary on August 28, 1939, and was published in the Federal Register on August 30, 1939 (4 Fed. Reg. 3764). Order No. 41 became effective September 1, 1939. A true and complete copy of Order No. 41, as issued August 28, 1939, is attached hereto marked "Exhibit 'A'" and made a part hereof. Order No. 41 as amended, effective July 1, 1940, was issued by the Secretary on June 21, 1940, and was published in the Federal Register on June 25, 1940 (5 Fed. Reg. 2337). A true and complete copy of Order No. 41, amended, effective July 1, 1940,
8 is attached hereto marked "Exhibit 'B'" and made a part hereof. Order No. 41, as amended, effective July 1, 1941, was issued by the Secretary on June 27, 1941, and was published in the Federal Register on June 28, 1941 (6 Fed. Reg. 3130). A true and complete copy of Order No. 41, as amended, effective July 1, 1941, is attached hereto marked "Exhibit 'C'" and made a part hereof. Amendment No. 1, effective September 6, 1941, to Order No. 41,

as amended, effective July 1, 1941, was issued by the Secretary on August 29, 1941, and was published in the Federal Register on September 4, 1941 (6 Fed. Reg. 4552). A true and complete copy of Amendment No. 1, effective September 6, 1941, to Order No. 41, as amended, effective July 1, 1941, is attached hereto marked "Exhibit 'D'" and made a part hereof. Order No. 41 was in full force and effect from September 1, 1939, through June 30, 1940; Order No. 41, as amended, effective July 1, 1940, was in full force and effect from July 1, 1940, through June 30, 1941; Order No. 41, as amended, effective July 1, 1941 was in full force and effect from July 1, 1941, through September 5, 1941; and order No. 41, as amended, effective July 1, 1941, and as further amended by Amendment No. 1, effective September 6, 1941, is now and has been in full force and effect since September 6, 1941.

V.

The defendants are now, and at all times hereinafter mentioned were, engaged in purchasing or receiving milk from producers, associations of producers, other handlers, persons producing milk not qualified to be received at an approved plant, or persons operating an unapproved plant, and disposing of such milk, or a portion thereof, as Class I milk or as Class II milk (as such terms are defined in Order No. 41, as originally issued and subsequently amended) in the marketing area in competition with other handlers subject to such order. The defendants are, and have been at all times mentioned herein, engaged in such handling of milk or cream therefrom as is in the current of interstate commerce, or which directly burdens, obstructs, or affects interstate commerce in milk and its products, and are handlers of milk as defined in section 8c(1) of the Act; section 941.1(a)(4) of Order No. 41; and section 941.1(a)(5) of Order No. 41, as subsequently amended.

VI.

Section 941.8(e) of Order No. 41, and section 941.8(g) of Order No. 41, as subsequently amended, provide that whenever verification by the market administrator of reports or payments of any handler discloses errors made in payments to the producer-settlement fund, the market administrator shall promptly bill such handler for any unpaid amount, and such handler shall within five days make payment to the market administrator of the amount

so billed. Such errors in payments made by the defendant to the producer-settlement fund for the delivery periods commencing September 1, 1939, and ending April 30, 1942, have been disclosed by an audit of the defendants' books and records, and the market administrator has billed the defendants for the amount necessary to adjust the defendants' account with the producer-settlement fund. The defendants, in violation of Order No. 41, as originally issued and subsequently amended, have failed and refused to make payment of the amounts for which the defendants were so billed; and as of July 28, 1942, the defendants owe to the market administrator for adjustment of errors disclosed in defendants' account with the producer-settlement fund the sum of $8,182.90.

Wherefore, Plaintiff Demands:

1. That the Court issue a mandatory injunction commanding the defendants to comply fully with all of the provisions of Order No. 41 as originally issued and subsequently amended, and particularly to make all payments now due and owing to the market administrator;

2. That the Court issue a permanent injunction enjoining and commanding the defendants, and each of them, their agents, attorneys, employees, and assigns, and all persons acting in concert with them, or under them, or in their behalf, or claiming so to act, from violating any of the provisions of Order No. 41, as amended, effective July 1, 1941, and as further amended by Amendment No. 1, effective September 6, 1941, regulating the handling of milk in the Chicago, Illinois, marketing area;

3. That the plaintiff be given all such other, further, and different relief as the Court may deem just and proper.

United States of America,
By J. Albert Woll,
J. Albert Woll,
United States Attorney,
Chicago, Illinois.

OK Lewis

John S. L. Yost,
John S. L. Yost, Special Assistant
to the Attorney General,
United States Department of Justice,
Washington, D. C.

G. Osmond Hyde,
G. Osmond Hyde, Senior Attorney,
United States Department of Agriculture,
Washington, D. C.

11 District of Columbia }
City of Washington } ss.

Paul L. Miller, being first duly sworn, deposes and says that he is Principal Agricultural Economist, Dairy and Poultry Branch, Agricultural Marketing Administration, United States Department of Agriculture, and that he makes this affidavit in behalf of the plaintiff in the foregoing complaint; that he has read the foregoing complaint and knows the contents thereof; and that the same is true of his own knowledge, except as to those matters therein stated on information and belief and as to those matters he believes them to be true. Paul L. Miller.

Subscribed and sworn to before me, a notary public, in and for the District of Columbia, this 31 day of August, 1942. Irene M. Smoot,
(Seal) Notary Public.

My Commission Expires September 1, 1943.

EXHIBIT "A".

0-41 Issued August 28, 1939

UNITED STATES DEPARTMENT OF AGRICULTURE

DIVISION OF MARKETING AND MARKETING AGREEMENTS

T. 7, Ch. IX, Code of Fed. Regs.

Marketing Orders—Part 941

ORDER REGULATING THE HANDLING OF MILK IN THE CHICAGO, ILLINOIS, MARKETING AREA[1]

CONTENTS

Sec. 941.0 Findings.
941.1 Definitions.
941.2 Market administrator.

[1] Section 941.0 to and including Section 941.13 issued under the authority contained in 48 Stat. 31 (1933), 7 U. S. C. 601 et seq. (1934); 49 Stat. 750 (1935); 50 Stat. 246 (1937), 7 U. S. C. 601 et seq. (Sup. IV, 1938).

941.3 Reports of handlers.
941.4 Classification of milk.
941.5 Minimum prices.
941.6 Application of provisions.
941.7 Determination of uniform prices to producers.
941.8 Payment for milk.
941.9 Expense of administration.
941.10 Marketing services.
941.11 Market advisory committee.
941.12 Effective time, suspension, or termination of order.
941.13 Liability.

Whereas, under the terms and provisions of Public Act No. 10, 73d Congress, as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, (50 Stat. 246) the Secretary of Agriculture of the United States is empowered, after due notice and opportunity for hearing, to enter into marketing agreements with processors, producers, associations of producers, and others engaged in such handling of any agricultural commodity or product thereof as is in the current of interstate or foreign commerce, or which directly burdens, obstructs, or affects interstate or foreign commerce in such commodity or product thereof; and

Whereas, under the terms and provisions of said act, the Secretary of Agriculture is empowered to issue orders applicable to processors, associations of producers, and others engaged in the handling of any agricultural commodity or product thereof specified in subsection (2) of section 8c, such orders to regulate only such handling of such agricultural commodity or product thereof as is in the current of interstate or foreign commerce or which directly burdens, obstructs, or affects interstate or foreign commerce in such commodity or product thereof; and

Whereas, the Secretary of Agriculture, having reason to believe that the execution of a marketing agreement and the issuance of an order with respect to the handling of milk in the Chicago, Illinois, marketing area would tend to effectuate the declared policy of said act, gave, on the 9th day of June 1939, notice of a public hearing which was held at Chicago, Illinois, from June 26 through June 30, 1939, at which time and place all interested parties were afforded an opportunity to be heard on a proposed marketing agreement and a proposed order; and

Whereas, after such hearing and after the tentative approval on the 18th day of August 1939, by the Secretary, of marketing agreement, handlers of more than fifty percent of the volume of milk covered by such order which was marketed within the Chicago, Illinois, marketing area, as defined in this order, refused or failed to sign such tentatively approved marketing agreement relating to milk; and

Whereas, the Secretary determined, on the 24th day of August 1939, said determination being approved by the President of the United States on the 26th day of August 1939, that said refusal or failure tends to prevent the effectuation of the declared policy of said act, that the issuance of this order is the only practical means, pursuant to such policy, of advancing the interests of producers of milk in said area, and that this order is approved or favored by over 67 percent of the producers voting in a referendum conducted by the Secretary, who, during the month of April 1939, said month having been determined by the Secretary to be a representative period, were engaged in the production of milk for sale in the Chicago, Illinois, marketing area; and

Whereas, the Secretary has found and proclaimed the period August 1919-July 1929 to be the base period to be used in determining the purchasing power of milk sold in the Chicago, Illinois, marketing area; and

Whereas, the Secretary herewith finds that a pro-rata assessment on handlers, as set forth in Section 9 of this order, at a rate not to exceed 2 cents per hundredweight on all milk received from producers during each delivery period, will provide funds necessary to pay such expenses, while such order is in effect, as will necessarily be incurred by the market administrator under such order for the maintenance and functioning of said market administrator; and

Section 941.0 *Findings.* Whereas, the Secretary finds upon the evidence introduced at said public hearing:

1. That all milk which was produced for sale in the marketing area is handled in the current of interstate commerce, or so as directly to burden, obstruct, or affect interstate commerce in milk or its products;

2. That the prices calculated to give milk produced for sale in said marketing area a purchasing power equivalent to the purchasing power of such milk, as determined pursuant to sections 2 and 8e of said act, are not reasonable

in view of the price of feeds, the available supplies of feed, and other economic conditions which affect market supply of and demand for such milk, and that the minimum prices set forth in this order are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest;

3. That this order regulates the handling of milk in the same manner as, and is applicable only to handlers defined in the marketing agreement upon which hearings have been held; and

4. That orderly marketing conditions for milk flowing into the Chicago, Illinois, marketing area are so disrupted as to result in the impairment of the purchasing power of such milk and that the issuance of this order, and all of its terms and conditions, will tend to effectuate the declared policy of the act.

Now, Therefore, the Secretary of Agriculture, pursuant to the powers conferred upon him by Public Act No. 10, 73d Congress, as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, hereby orders that such handling of milk in the Chicago, Illinois, marketing area as is in the current of interstate commerce, or which directly burdens, obstructs, or affects interstate commerce, shall, from the effective date hereof, conform to and be in compliance with the following terms and conditions:

Sec. 941.1 *Definitions.* (a) TERMS. The following terms as used herein shall have the following meanings:

(1) The term "Chicago, Illinois, marketing area," hereinafter called the "marketing area," means the territory within the corporate limits of the cities of Chicago, Evanston, Wilmette, Kenilworth, Winnetka, and Glencoe, all in the State of Illinois.

(2) The term "person" means any individual, partnership, corporation, association, or any other business unit.

(3) The term "producer" means any person who produces milk which is received by a handler at a plant which is approved by any health authority for the receiving of milk for sale in the marketing area, or who produces milk which, upon proof furnished satisfactory to the market administrator, is qualified to be received at such plant.

(4) The term "handler" means any person who, on his own behalf or on behalf of others, purchases or receives milk from producers, associations of producers, or other handlers, all, or a portion, of which milk is disposed of

as milk or cream in the marketing area; and who, on his own behalf or on behalf of others engages in such handling of milk, or cream therefrom, as is in the current of interstate commerce or which directly burdens, obstructs, or affects interstate commerce in milk and its products. This definition shall be deemed to include any cooperative association or handler with respect to the milk of any producer which it causes to be delivered to a plant from which no milk or cream is disposed of in the marketing area, for the account of such cooperative association or handler, and for which such cooperative association or handler collects payments.

(5) The term "market administrator" means the agency which is described in Sec. 941.2 for the administration hereof.

(6) The term "delivery period" means the current marketing period from the first to the last day of each month, both inclusive.

(7) The term "cooperative association" means any cooperative association of producers which the Secretary determines (a) to have its entire activities under the control of its members, and (b) to have and to be exercising full authority in the sale of milk of its members.

(8) The term "act" means Public Act No. 10, 73d Congress, as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937.

(9) The term "Secretary" means the Secretary of Agriculture of the United States.

Sec. 941.2 *Market administrator.* (a) DESIGNATION. The agency for the administration hereof shall be a market administrator who shall be a person selected by the Secretary. Such person shall be entitled to such compensation as may be determined by, and shall be subject to removal at the discretion of, the Secretary.

(b) POWERS. The market administrator shall:

(1) Administer the terms and provisions hereof; and

(2) Report to the Secretary complaints of violation of the provisions hereof.

(c) DUTIES. The market administrator shall:

(1) Within 45 days following the date upon which he enters upon his duties, execute and deliver to the Secretary a bond, conditioned upon the faithful performance of his duties, in an amount and with surety thereon satisfactory to the Secretary.

(2) Pay, out of the funds provided by Sec. 941.9, the cost of his bond, his own compensation, and all other expenses necessarily incurred in the maintenance and functioning of his office.

(3) Keep such books and records as will clearly reflect the transactions provided for herein; and surrender the same to his successor or to such other person as the Secretary may designate.

(4) Publicly disclose to handlers and producers, unless otherwise directed by the Secretary, the name of any person who, within 4 days after the date upon which he is required to perform such acts, has not (a) made reports pursuant to Sec. 941.3 or (b) made payments pursuant to Sec. 941.8.

(5) Promptly verify the information contained in the reports submitted by handlers.

Sec. 941.3 *Reports of handlers.* (a) SUBMISSION OF REPORTS. Each handler shall report to the market administrator, in the detail and on forms prescribed by the market administrator, as follows:

(1) On or before the 7th day after the end of each delivery period (a) the receipts of milk at each plant from producers, (b) the receipts of milk at each plant from handlers, (c) the receipts at each plant of the milk, if any, produced by him, (d) the utilization of all receipts of milk for the delivery period, and (e) the name and address of each new producer.

(2) Within 10 days after the market administrator's request with respect to any producer for whom such information is not in the files of the market administrator and with respect to a period or periods of time designated by the market administrator (a) the name and address, (b) the total pounds of milk delivered, (c) the average butterfat test of milk delivered, and (d) the number of days upon which deliveries were made.

(3) On or before the 20th day after the end of each delivery period, his producer pay roll, which shall show for each producer (a) the total delivery of milk with the average butterfat test thereof, (b) the net amount of payment to such producer made pursuant to Sec. 941.8, and (c) any deductions and charges made by the handler.

(4) On or before the 7th day after the end of such delivery period, the sale or disposition of milk outside the marketing area, pursuant to Sec. 941.5 (c) as follows:

(a) the amount and the utilization of such milk, (b) the butterfat test thereof, (c) the date of such sale or disposition, (d) the point of use, (e) the plant from which such milk is shipped, and (f) such other information with respect thereto as the market administrator may require.

(b) VERIFICATION OF REPORTS. Each handler shall make available to the market administrator or his agent (1) those records which are necessary for the verification of the information contained in the reports submitted in accordance with this section, and (2) those facilities necessary for the checking of the weighing and sampling of milk and for determining the utilization of milk by the handler.

Sec. 941.4 *Classification of milk.* (a) BASIS OF CLASSIFICATION. All milk purchased or received by a handler from producers, associations of producers, and other handlers, including milk produced by him, if any, shall be classified by the market administrator in the classes set forth in paragraph (b) of this section.

(b) CLASSES OF UTILIZATION. The classes of utilization of milk shall be as follows:

(1) Class I milk shall be all milk disposed of in the form of fluid milk, and all milk not accounted for as Class II milk or Class III milk.

(2) Class II milk shall be all milk, except skimmed milk, disposed of in the form of flavored milk and flavored milk drinks, all milk used to produce cottage cheese, and all milk used to produce cream which is disposed of in the form of cream (for consumption as cream), ice cream, and ice cream mix.

(3) Class III milk shall be all milk used to produce a milk product other than one of those specified in Class II, and all milk accounted for as actual plant shrinkage, but not to exceed 2 percent of the total receipts of milk from producers.

(c) INTERHANDLER AND NONHANDLER SALES. Milk disposed of by a handler to another handler, and milk disposed of by a handler to a person who is not a handler but who distributes milk or manufactures milk products shall be classified as Class I milk: Provided, That if the selling handler on or before the 7th day after the end of the delivery period furnishes to the market administrator a statement which is signed by the buyer and seller that

such milk was disposed of as Class II milk or Class III milk, such milk shall be classified accordingly, subject to verification by the market administrator.

Sec. 941.5 *Minimum prices.* (a) CLASS PRICES. Except as set forth in paragraph (c) of this section and subject to the location adjustment set forth in paragraph (b) of this section, each handler shall pay, at the time and in the manner set forth in Sec. 941.8, for milk purchased or received from producers by such handler at any plant, platform, or loading station located not more than 70 miles from the City Hall in Chicago, not less than the following prices:

Class I milk—Add to the price per hundredweight for milk of 3.5 percent butterfat content computed pursuant to the formula as set forth in section 1 of article VI of the marketing agreement for evaporated milk issued by the Secretary on May 31, 1935, or the last amendment thereto, if any, 70 cents per hundredweight for the months of July, August, September, October, and November; 55 cents per hundredweight for the months of December, January, February, March, and April; and 45 cents per hundredweight for the months of May and June: Provided, That with respect to Class I milk disposed of under a program approved by the Secretary for the sale or disposition of milk to low-income consumers, including persons on relief, the price shall be $1.395 per hundredweight.

Class II milk—Add to the price per hundredweight for milk of 3.5 percent butterfat content computed pursuant to the formula as set forth in section 1 of article VI of the marketing agreement for evaporated milk issued by the Secretary on May 31, 1935, or the last amendment thereto, if any, 32 cents per hundredweight for the months of July, August, September, October, and November; 28 cents per hundredweight for the months of December, January, February, March, and April; and 25 cents per hundredweight for the months of May and June.

Class III milk—Multiply by 3.5 the average price per pound of 92-score butter at wholesale in the Chicago market, as reported by the United States Department of Agriculture for the delivery period during which such milk was received, and add 20 percent: Provided, That in the event Class III milk is used to produce evaporated or condensed milk handlers shall pay a price per hundredweight computed pursuant to the formula set forth in

section 1 of article VI of the marketing agreement for evaporated milk issued by the Secretary on May 31, 1935, or the last amendment thereto, if any.

(b) LOCATION ADJUSTMENTS TO HANDLERS. With respect to milk purchased or received from producers at a plant, platform, or loading station located more than 70 miles from the City Hall in Chicago, which is classified as Class I milk and as Class II milk (and transported to any point within such 70-mile zone), there shall be deducted 2 cents per hundredweight and ½ cent per hundredweight, respectively, for each additional 15 miles or part thereof that such plant, platform, or loading station is located in excess of 70 miles from the City Hall in Chicago. There shall be no location adjustment to handlers with respect to Class III milk. For the purposes of this paragraph Class I milk shall be considered to be that milk received from producers at plants, platforms, or loading stations located nearest the marketing area from which whole milk is shipped to the marketing area.

(c) SALES OUTSIDE THE MARKETING AREA. The price to be paid by a handler for Class I milk disposed of outside the marketing area, in lieu of the price otherwise applicable pursuant to this section, shall be the price, as ascertained by the market administrator, which is being paid in the market where such milk is disposed of, for milk of equivalent use: Provided, That in the event such Class I milk is disposed of outside the 70-mile zone from a plant at which milk is received from producers and which is located more than 70 miles from the City Hall in Chicago, such price as ascertained by the market administrator shall be adjusted by an amount equal to the carload freight rate approved by the Interstate Commerce Commission for the movement of milk in 40-quart cans from the shipping point for the plant where such milk is received from producers to the railroad delivery point serving the market where such milk is utilized as Class I milk.

Sec. 941.6 *Application of provisions.* (a) HANDLERS WHO ARE ALSO PRODUCERS. (1) No provision hereof shall apply to a handler who is also a producer and who purchases or receives no milk from producers or an association of producers, except that such handler shall make reports to the market administrator at such time and in such manner as the market administrator may request.

(2) In the case of a handler who is also a producer and who purchases or receives milk from producers or an association of producers, the market administrator, before making the computations set forth in Sec. 941.7, shall (a) exclude the milk purchased or received by him in each class from other handlers, (b) exclude from his remaining Class I milk and Class II milk up to but not exceeding 95 percent of the quantity of milk produced and disposed of by him, and (c) exclude from his remaining Class III milk the balance of the milk produced and disposed of by him.

(3) The market administrator, in computing the value of milk for any handler pursuant to Sec. 941.7, shall consider as Class III milk any milk or cream received in bulk by such handler from a handler who distributes part of his own production. If the receiving handler disposes of such milk or cream for other than Class III purposes, the market administrator shall add to the total value computed pursuant to Sec. 941.7 the difference between (a) the value of such milk or cream at the Class III price and (b) the value according to its actual usage.

Sec. 941.7 *Determination of uniform prices to producers.* (a) COMPUTATION OF VALUE OF MILK FOR EACH HANDLER. For each delivery period the market administrator shall compute, subject to the provisions of Sec. 941.6, the value of milk for each handler which was purchased or received from producers by (a) multiplying the quantity of such milk in each class by the price applicable pursuant to Sec. 941.5, and (b) adding together the resulting values of each class.

(b) COMPUTATION AND ANNOUNCEMENT OF UNIFORM PRICES. The market administrator shall compute and announce the uniform price per hundredweight of milk for each delivery period in the following manner:

(1) Combine into one total the respective values of milk computed pursuant to paragraph (a) of this section, for each handler who made the reports pursuant to Sec. 941.3 (a) for such delivery period;

(2) Add the amount of the location differentials applicable pursuant to Sec. 941.8 (g);

(3) Add the amount of cash balance in the producer-settlement fund;

(4) Divide by the total quantity of milk represented in the computations pursuant to paragraph (a) of this section;

(5) Subtract not less than 4 cents nor more than 5 cents for the purpose of retaining a cash balance in the producer-settlement fund; and

(6) On or before the 12th day after the end of each delivery period mail to all handlers and publicly announce (a) such of these computations as do not disclose information confidential pursuant to the act, (b) the blended price per hundredweight which is the result of these computations, and (c) the price of Class I milk, Class II milk, and Class III milk used in such computations.

Sec. 941.8 *Payment for milk.* (a) TIME AND METHOD OF PAYMENT. On or before the 15th day after the end of each delivery period each handler shall pay each producer, for milk purchased or received during the delivery period, an amount of money representing not less than the total value of such milk, at the uniform price per hundredweight, computed pursuant to Sec. 941.7 (b) and subject to the butterfat differential and location adjustments set forth in this section.

(b) PRODUCER-SETTLEMENT FUND. The market administrator shall establish and maintain a separate fund known as "the producer-settlement fund" into which he shall deposit all payments made by handlers pursuant to paragraphs (c) and (e) and out of which he shall make all payments to handlers pursuant to paragraphs (d) and (e) of this section.

(c) PAYMENTS TO THE PRODUCER-SETTLEMENT FUND. On or before the 14th day after the end of each delivery period each handler shall pay to the market administrator the amount by which the total value of the milk purchased or received by him from producers during the delivery period is greater than the amount obtained by multiplying the hundredweight of milk purchased and received from producers by the uniform price.

(d) PAYMENTS OUT OF THE PRODUCER-SETTLEMENT FUND. On or before the 15th day after the end of each delivery period, the market administrator shall pay to each handler for payment to producers the amount, if any, by which the total value of such milk purchased or received from producers by such handler is less than the amount obtained by multiplying the hundredweight of such milk purchased or received from producers by such handler by the uniform price. If at such time the balance in the

producer-settlement fund is insufficient to make all payments pursuant to this paragraph, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the necessary funds are available. No handler who, on the 15th day after the end of each delivery period, has not received the balance of the payment due him from the market administrator shall be deemed to be in violation of paragraph (a) of this section if he reduces his payments to producers by not more than the amount of the reduction in payment from the producer-settlement fund.

(e) ADJUSTMENTS OF ERRORS IN PAYMENTS. Whenever verification by the market administrator of reports or payments of any handler discloses errors made in payments to the producer-settlement fund pursuant to paragraph (c) of this section, the market administrator shall promptly bill such handler for any unpaid amount and such handler shall, within 5 days, make payment to the market administrator of the amount so billed. Whenever verification discloses that payment is due from the market administrator to any handler, pursuant to paragraph (d) of this section, the market administrator shall, within 5 days, make such payment to such handler. Whenever verification by the market administrator of the payment by a handler to any producer, for milk purchased or received by such handler, discloses payment to such producer of less than is required by this section, the handler shall make up such payment to the producer not later than the time of making payment to producers next following such disclosure.

(f) BUTTERFAT DIFFERENTIAL. If any handler has purchased or received from any producer, during any delivery period, milk having an average butterfat content other than 3.5 percent, such handler, in making the payments pursuant to paragraph (a) of this section to such producer, shall add for each one-tenth of 1 percent of average butterfat content above 3.5 percent not less than, or shall deduct for each one-tenth of 1 percent of average butterfat content below 3.5 percent not more than, 4 cents per hundredweight.

(g) LOCATION ADJUSTMENTS TO PRODUCERS. In making payments to producers pursuant to paragraph (e) of this section, handlers shall deduct with respect to all milk purchased or received from producers at a country plant,

platform, or loading station located more than 70 miles from the City Hall in Chicago, the amount specified as follows:

Within 70 to 85 miles	2 cents per hundredweight.
Within 86 to 100 miles	4 cents per hundredweight.
Within 101 to 115 miles	6 cents per hundredweight.
Within 116 to 130 miles	8 cents per hundredweight.
Within 131 to 145 miles	10 cents per hundredweight.
Within 146 to 160 miles	12 cents per hundredweight.
Within 161 to 175 miles	14 cents per hundredweight.
For each 15 miles or part thereof beyond 176 miles from the City Hall of Chicago, an additional	½ cent per hundredweight.

Sec. 941.9 *Expense of administration.* (a) PAYMENTS BY HANDLERS. As his pro-rata share of the expense of the administration hereof each handler, except those handlers exempt from the provisions hereof as set forth in Sec. 941.6 (a), shall pay to the market administrator, on or before the 15th day after the end of each delivery period, a sum not exceeding 2 cents per hundredweight with respect to all milk purchased or received by him during such delivery period from producers, or produced by him, the exact sum to be determined by the market administrator, subject to review by the Secretary: Provided, That each handler which is a cooperative association shall pay such pro-rata share of expense of administration only on that milk of producers actually received at a plant of such cooperative association, or caused to be delivered by such cooperative association to a plant from which no milk or cream is disposed of in the marketing area.

(b) SUITS BY MARKET ADMINISTRATOR. The market administrator may maintain a suit in his own name against any handler for the collection of such handler's pro-rata share of expense set forth in this section.

Sec. 941.10 *Marketing services.* (a) MARKETING SERVICE DEDUCTION. In making payments to producers pursuant to Sec. 941.8, each handler, with respect to all milk received from each producer during each delivery period, except as set forth in paragraph (b) of this section, shall deduct 3 cents per hundredweight, or such lesser amount as the market administrator shall determine to be sufficient, such determination to be subject to review by the Secretary,

and shall, on or before the 15th day after the end of such delivery period, pay such deductions to the market administrator. Such moneys shall be expended by the market administrator for verification of weights, samples, and tests of milk received from such producers and in providing for market information to such producers. The market administrator may contract with an association or associations of producers for the furnishing of the whole or any part of such services to, or with respect to the milk received from, such producers.

(b) MARKETING SERVICE DEDUCTIONS WITH RESPECT TO MEMBERS OF A PRODUCERS' COOPERATIVE ASSOCIATION. In the case of producers for whom a cooperative association is actually performing the services set forth in paragraph (a) of this section each handler shall, in lieu of the deductions specified in paragraph (a) of this section, make such deductions from payments made pursuant to Sec. 941.8 as may be authorized by such producers, and pay over on or before the 15th day after the end of each delivery period such deductions to the associations rendering such service of which such producers are members.

Sec. 941.11 *Market advisory committee.* (a) Subsequent to the effective date hereof, the market administrator may select a representative committee of the industry for purposes (1) of recommendation of amendments to this order, and (2) for conferences, counsel, and advice.

Sec. 941.12 *Effective time, suspension, or termination of order.* (a) EFFECTIVE TIME. The provisions hereof, or any amendment hereto, shall become effective at such time as the Secretary may declare and shall continue in force until suspended, or terminated, pursuant to paragraph (b) of this section.

(b) SUSPENSION OR TERMINATION OF ORDER. The Secretary may suspend or terminate this order or any provision hereof whenever he finds that this order or any provision hereof obstructs or does not tend to effectuate the declared policy of the act. This order shall, in any event, terminate whenever the provisions of the act authorizing it cease to be in effect.

(c) CONTINUING POWER AND DUTY OF THE MARKET ADMINISTRATOR. If upon the suspension or termination of any or all provisions hereof, there are any obligations arising hereunder, the final accrual or ascertainment of which

requires further acts by any handler, by the market administrator, or by any other person, the power and duty to perform such further acts shall continue notwithstanding such suspension or termination: Provided, That any such acts required to be performed by the market administrator shall, if the Secretary so directs, be performed by such other person, persons, or agency as the Secretary may designate.

(1) The market administrator, or such other person as the Secretary may designate, shall (a) continue in such capacity until removed by the Secretary, (b) from time to time account for all receipts and disbursements, and when so directed by the Secretary deliver all funds on hand, together with the books and records of the market administrator or such person, to such person as the Secretary shall direct, and (c) if so directed by the Secretary execute such assignments or other instruments necessary or appropriate to vest in such person full title to all funds, property, and claims vested in the market administrator or such person pursuant thereto.

(d) LIQUIDATION AFTER SUSPENSION OR TERMINATION. Upon the suspension or termination of any or all provisions hereof the market administrator, or such person as the Secretary may designate, shall, if so directed by the Secretary, liquidate the business of the market administrator's office and dispose of all funds and property then in his possession or under his control, together with claims for any funds which are unpaid or owing at the time of such suspension or termination. Any funds collected pursuant to the provisions hereof, over and above the amounts necessary to meet outstanding obligations and the expenses necessarily incurred by the market administrator or such person in liquidating and distributing such funds, shall be distributed to the contributing handlers and producers in an equitable manner.

Sec. 941.13 *Liability.* (a) LIABILITY OF HANDLERS. The liability of the handlers hereunder is several and not joint, and no handler shall be liable for the default of any other handler.

Now, Therefore, Harry L. Brown, Acting Secretary of Agriculture, acting under the provisions of Public Act No. 10, 73d Congress, as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, for the purposes and within the limitations there-

in contained and not otherwise, hereby executes and issues in duplicate this order, under his hand and the official seal of the Department of Agriculture, in the city of Washington, District of Columbia, on this 28th day of August 1939, and declares this order to be effective on and after the 1st day of September 1939.

Harry L. Brown,
(Seal) *Acting Secretary of Agriculture.*

13 EXHIBIT "B."

O-41, as amended Issued June 21, 1940

UNITED STATES DEPARTMENT OF AGRICULTURE

DIVISION OF MARKETING AND MARKETING AGREEMENTS

T. 7, Ch. IX, Code of Fed. Regs.

Marketing Orders—Part 941

ORDER, AS AMENDED, REGULATING THE HANDLING OF MILK IN THE CHICAGO, ILLINOIS, MARKETING AREA[1]

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[1] Section 941.0 to and including Section 941.12 issued under the authority contained in 48 Stat. 31 (1933), 7 U. S. C. 601 et seq. (1934); 49 Stat. 750 (1935); 50 Stat. 246 (1937), 7 U. S. C. 601 et seq. (Supp. IV, 1938).

Whereas, pursuant to the powers conferred upon the Secretary by Public Act No. 10, 73d Congress, as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937 (50 Stat. 246), the Secretary of Agriculture of the United States tentatively approved, on August 18, 1939, a marketing agreement and issued, effective September 1, 1939, an order, both of which regulate the handling of milk in the Chicago, Illinois, marketing area; and

Whereas, the Secretary, having reason to believe that amendments to said tentatively approved marketing agreement and to said order would tend to effectuate the declared policy of said act, gave, on the 14th day of March 1940, notice of a public hearing which was held at Chicago, Illinois, on March 20, 21, 22, and 23, 1940, at which times and place all interested parties were afforded an opportunity to be heard on certain proposed amended provisions of the tentatively approved marketing agreement and of the order; and

Whereas, after such hearing, handlers of more than fifty percent of the volume of milk covered by this order, as amended, which is marketed within the Chicago, Illinois, marketing area, refused or failed to sign a tentatively approved marketing agreement, as amended, relating to the handling of milk in such marketing area; and

Whereas, the requirements of section 8c (9) of said act have been complied with; and

Whereas, the Secretary finds, upon the evidence introduced at the above-mentioned public hearing, said findings being in addition to findings made upon the evidence introduced at the original hearing on said order and being in addition to the other findings and determinations made prior to or at the time of the original issuance of said order (which findings are hereby ratified and affirmed, save only as such findings are in conflict with the findings hereinafter set forth):

Section 941.0 *Findings.* 1. That the prices calculated to give milk produced for sale in said marketing area a purchasing power equivalent to the purchasing power of such milk, as determined pursuant to sections 2 and 8e of said act, are not reasonable in view of the price of feeds, the available supplies of feed, and other economic conditions which affect market supply of and demand for such milk, and that the minimum prices set forth in this order, as amended, are such prices as will reflect the afore-

said factors, insure a sufficient quantity of pure of wholesome milk, and be in the public interest;

2. That the provisions of the order, as amended, requiring handlers to pay producers, through the producer-settlement fund, the difference between the value of milk or cream, purchased or received from sources other than producers or other handlers, at the Class IV price and the value according to its actual utilization by the handler, are incidental to and not inconsistent with the other provisions of the order, as amended, and are necessary to effectuate such other provisions;

3. That the order, as amended, regulates the handling of milk in the same manner as and is applicable only to handlers defined in a marketing agreement, as amended, upon which a hearing has been held; and

4. That the issuance of this order, as amended, and all of its terms and conditions, will tend to effectuate the declared policy of the act:

Now, Therefore, H. A. Wallace, Secretary of Agriculture, pursuant to the powers conferred upon him by said act, hereby orders that such handling of milk in the Chicago, Illinois, marketing area, as is in the current of interstate commerce, or as directly burdens, obstructs, or affects interstate commerce, shall, from the effective date hereof, be in compliance with the following terms and conditions:

Sec. 941.1 *Definitions.* (a) TERMS. The following terms as used herein shall have the following meanings:

(1) The term "Chicago, Illinois, marketing area," hereinafter called the "marketing area," means the territory lying within the corporate limits of the cities of Chicago and Evanston, and the territory lying within the corporate limits of the villages of Wilmette, Kenilworth, Winnetka, Glencoe, and Oak Park, all in the State of Illinois.

(2) The term "person" means any individual, partnership, corporation, association, or any other business unit.

(3) The term "approved plant" means any plant which is approved by any health authority for the receiving of milk which may be disposed of as Class I milk, as defined in Sec. 941.4, in the marketing area.

(4) The term "producer" means any person who produces milk which is received by a handler at an approved plant, or who produces milk which, upon proof furnished

satisfactory to the market administrator, is qualified to be received at such approved plant.

(5) The term "handler" means any person who, on his own behalf or on behalf of others, purchases or receives milk from producers, associations of producers, other handlers, persons producing milk not qualified to be received at an approved plant, or persons operating an unapproved plant, all, or a portion, of which milk is disposed of as Class I milk or Class II milk in the marketing area; and who, on his own behalf or on behalf of others, engages in such handling of milk, or cream therefrom, as is in the current of interstate commerce or which directly burdens, obstructs, or affects interstate commerce in milk and its products. This definition shall be deemed to include any person who receives milk from producers at an approved plant from which no milk or cream is disposed of in the marketing area, and any cooperative association or handler with respect to the milk of any producer which it causes to be delivered to a plant from which no milk or cream is disposed of in the marketing area, for the account of such cooperative association or handler.

(6) The term "market administrator" means the agency which is described in Sec. 941.2 for the administration hereof.

(7) The term "delivery period" means the current marketing period from the first to the last day of each month, both inclusive.

(8) The term "cooperative association" means any cooperative association of producers which the Secretary determines (a) to have its entire activities under the control of its members, and (b) to have and to be exercising full authority in the sale of milk of its members.

(9) The term "frozen cream" means milk the butterfat from which is held in an approved cold storage warehouse at an average temperature below zero degrees Fahrenheit for 7 consecutive days, as shown by charts of a recording thermometer.

(10) The term "act" means Public Act No. 10, 73d Congress, as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937.

(11) The term "Secretary" means the Secretary of Agriculture of the United States.

Sec. 941.2 *Market administrator.* (a) SELECTION, REMOVAL, AND BOND. The agency for the administration here-

of shall be a market administrator who shall be a person selected and subject to removal by the Secretary. The market administrator shall, within 45 days following the date upon which he enters upon his duties, execute and deliver to the Secretary a bond, conditioned upon the faithful performance of his duties, in an amount and with surety thereon satisfactory to the Secretary.

(b) COMPENSATION. The market administrator shall be entitled to such reasonable compensation as shall be determined by the Secretary.

(c) POWERS. The market administrator shall have the power: (1) to administer the terms and provisions hereof, and (2) report to the Secretary complaints of violations of this order.

(d) DUTIES. The market administrator, in addition to the duties hereinafter described, shall:

(1) Keep such books and records as will clearly reflect the transactions provided for herein;

(2) Submit his books and records to examination by the Secretary at any and all times;

(3) Furnish such information and such verified reports as the Secretary may request;

(4) Obtain a bond with reasonable security thereon covering each employee who handles funds entrusted to the market administrator;

(5) Publicly disclose, after reasonable notice, the name of any person who has not made reports pursuant to Sec. 941.3, or made payments required by Sec. 941.8;

(6) Prepare and disseminate, for the benefit of producers, consumers, and handlers, such statistics and information concerning the operation hereof as do not reveal confidential information;

(7) Employ and fix the compensation of such persons as may be necessary to enable him to administer the terms and provisions hereof; and

(8) Pay, out of the funds received pursuant to Sec. 941.9, the cost of his bond and of the bonds of such of his employees as handle funds entrusted to the market administrator, his own compensation, and all other expenses which will necessarily be incurred by him for the maintenance and functioning of his office and the performance of his duties.

(e) ANNOUNCEMENT OF PRICES. The market administrator shall compute and publicly announce prices as follows:

(1) Not later than the 5th day after the end of each delivery period, the prices for all classes of milk pursuant to Sec. 941.5 (a), the differentials pursuant to Sec. 941.5 (b), and the Class I prices applicable pursuant to Sec. 941.5 (d).

(2) Not later than the 14th day after the end of each delivery period, the uniform price computed pursuant to Sec. 941.7 (b).

Sec. 941.3 *Reports of handlers.* (a) SUBMISSION OF REPORTS. Each handler shall report to the market administrator, in the detail and on forms prescribed by the market administrator, as follows:

(1) On or before the 7th day after the end of each delivery period, each handler who purchases or receives milk from associations of producers and other handlers, with respect to all milk purchased or received from such sources, shall submit to the market administrator and to the association of producers or handlers from whom the milk was purchased, a record of the utilization of such milk, classified pursuant to Sec. 941.4.

(2) On or before the 10th day after the end of each delivery period, the quantity and the butterfat test of (a) the receipts of milk at each plant from producers, (b the receipts of milk at each plant from other handlers, (c) the receipts of milk or cream from sources other than producers and handlers, if any, (d) the receipts at each plant of the milk produced by him, if any, and (e) the utilization of all receipts of milk for the delivery period.

(3) On or before the 10th day after the end of each delivery period, the information required with respect to producer additions, producer withdrawals, and changes in names of farm operators.

(4) On or before the 10th day after the end of each delivery period, the sale or disposition of milk outside the marketing area, pursuant to Sec. 941.5 (d) as follows: (a) the amount and the utilization of such milk, (b) the butterfat test thereof, (c) the point of use, (d) the plant from which such milk is shipped, and (e) such other information with respect thereto as the market administrator may require.

(5) On or before the 25th day after the end of each delivery period, his producer pay roll, which shall show for each producer (a) the total delivery of milk with the average butterfat test thereof, (b) the net amount of payment to such producer made pursuant to Sec. 941.8, (c) any deductions and charges made by the handler, and (d) such other information with respect thereto as the market administrator may require.

(b) VERIFICATION OF REPORTS AND PAYMENTS. The market administrator shall verify all reports and payments of each handler by audit of such handler's records, and of the records of any other handler or person upon whose disposition of milk such handler claims classification. Each handler shall keep adequate records of receipts and utilization of milk and, shall, during the usual hours of business, make available to the market administrator or his representative such records and facilities as will enable the market administrator to:

(1) Verify the receipts and disposition of all milk required to be reported pursuant to this section, and, in case of errors or omissions, ascertain the correct figures;

(2) Weigh, sample, and test for butterfat content the milk received from producers and any product of milk upon which classification depends; and

(3) Verify the payments to producers prescribed in Sec. 941.8.

Sec. 941.4 *Classification of milk.* (a) BASIS OF CLASSIFICATION. All milk purchased or received by a handler from producers, associations of producers, and other handlers, including milk produced by him, if any, and including milk or cream purchased or received from sources other than from producers and handlers, if any, shall be reported by the handler in the classes set forth in paragraph (b) of this section: Provided, That if milk is moved from the plant where first received from producers to the plant of a second handler who has facilities for manufacturing milk products, such milk shall be classified as Class I milk, if moved from the second handler's plant in the form of milk to the plant of another handler, or nonhandler, who distributes fluid milk, and such milk shall be classified as Class II milk if moved from the second handler's plant in the form of cream to the plant of another handler, or nonhandler, who distributes fluid milk. If such milk is moved from the second handler's

plant in the form of milk or cream to the plant of another handler, or nonhandler, who does not distribute fluid milk, such milk or cream shall be reported by such second handler, according to its utilization by the receiving handler or nonhandler, subject to verification by the market administrator: Provided further, That if milk is moved from the plant where first received from producers to the plant of a second handler who does not have facilities for manufacturing milk products, and if such milk is moved from the second handler's plant in the form of milk or cream to the plant of a nonhandler, such milk or cream shall be reported by the second handler according to its utilization by the nonhandler, subject to verification by the market administrator. If such milk is moved to a third handler's plant, such milk shall be classified as Class I milk if moved from the third handler's plant in the form of milk to the plant of another handler, or nonhandler, who distributes fluid milk; and such milk shall be classified as Class II milk if moved from the third handler's plant in the form of cream to the plant of another handler, or nonhandler, who distributes fluid milk. If such milk is moved from the third handler's plant, in the form of milk or cream to the plant of another handler, or nonhandler, who does not distribute fluid milk, such milk or cream shall be reported by such third handler according to its utilization by the receiving handler or nonhandler, subject to verification by the market administrator.

(b) CLASSES OF UTILIZATION. Subject to the conditions set forth in paragraph (a) of this section, the classes of utilization of milk shall be as follows:

(1) Class I milk shall be all milk disposed of in the form of fluid milk, except such milk as is used for purposes for which no approval by health authorities in the marketing area is necessary, and all milk not accounted for as Class II milk, Class III milk, or Class IV milk.

(2) Class II milk shall be all milk, except skim milk, disposed of in the form of flavored milk and flavored milk drinks, and all milk, the butterfat from which is disposed of in the form of cream, sweet or sour, cottage cheese, buttermilk, frozen cream, ice cream, and ice cream mix.

(3) Class III milk shall be all milk the butterfat from which is used to produce a milk product other than one of those specified in Class II and Class IV, and all milk disposed of for those purposes for which no approval by health authorities in the marketing area is necessary.

(4) Class IV milk shall be all milk the butterfat from which is used to produce butter and cheese, except cottage cheese, and all milk accounted for as actual plant shrinkage: Provided, That such plant shrinkage shall not exceed 2 percent of the total receipts of milk from producers. Any handler whose report claimed the original classification of milk in this class shall be liable under the provisions of Sec. 941.8 (g) for the difference between the Class IV and Class II prices for the delivery period in which the Class IV classification was claimed on any such milk, if the butterfat used in the production of butter is subsequently used in the production of ice cream or ice cream mix.

(c) RESPONSIBILITY OF HANDLERS IN ESTABLISHING THE CLASSIFICATION OF MILK. In establishing the classification of milk, as required in paragraph (b) of this section, the responsibilities of handlers in establishing the classification of milk received by them shall be as follows:

(1) In establishing the classification of any milk received by a handler from producers, the burden rests upon the handler who receives the milk from producers to account for the milk and to prove to the market administrator that such milk should not be classified as Class I milk.

(2) With respect to milk, or skimmed milk, disposed of to another handler, the burden rests upon the handler who purchased the milk from producers to account for the milk, or skimmed milk, and to prove to the market administrator that such milk, or skimmed milk, should not be classified as Class I milk: Provided, That if verification by the market administrator discloses a higher utilization than that reported pursuant to Sec. 941.3 (a) (1) for milk purchased by a handler from a cooperative association, the market administrator shall notify the purchasing handler and such handler shall pay to such cooperative association, within 5 days after notification by the market administrator, the difference in value of such milk as verified by the market administrator and as reported by such handler pursuant to Sec. 941.3 (a) (1).

(d) COMPUTATION OF MILK IN EACH CLASS. For each delivery period, each handler shall compute, in the manner and on forms prescribed by the market administrator, the amount of milk in each class, as defined in paragraph (b) of this section, as follows:

(1) Determine the total pounds of milk (a) received from producers, (b) produced by him, if any, (c) received from other handlers, if any, (d) received from other sources, if any, and (e) add together the resulting amounts.

(2) Determine the total pounds of butterfat received as follows: (a) multiply the weight of the milk received from producers by its average butterfat test, (b) multiply the weight of the milk produced by him, if any, by its average butterfat test, (c) multiply the weight of the milk received from other handlers, if any, by its average butterfat test, (d) multiply the weight of the milk received from other sources, if any, by its average butterfat test, and (e) add together the resulting amounts.

(3) Determine the total pounds of milk in Class I as follows: (a) convert to quarts the quantity of milk disposed of in the form of milk, except such milk as is used for purposes for which no approval by health authorities in the marketing area is necessary, and multiply by 2.15, (b) multiply the result by the average butterfat test of such milk, and (c) if the quantity of butterfat so computed when added to the pounds of butterfat in Class II milk, Class III milk, and Class IV milk, computed pursuant to subparagraphs (4) (b), (5) (b), and (6) (c) of this paragraph, is less than the total pounds of butterfat received, computed in accordance with subparagraph (2) of this paragraph, an amount equal to the difference shall be divided by 3.5 percent and added to the quantity of milk determined pursuant to (a) of this subparagraph.

(4) Determine the total pounds of milk in Class II as follows: (a) multiply the actual weight of each of the several products of Class II milk by its average butterfat test, (b) add together the resulting amounts, and (c) divide the result obtained in (b) of this subparagraph by 3.5 percent.

(5) Determine the total pounds of milk in Class III as follows: (a) multiply the actual weight of each of the several products of Class III milk, including all milk disposed of for those purposes for which no approval by health authorities in the marketing area is necessary, by its average butterfat test, (b) add together the resulting amounts, and (c) divide the result obtained in (b) of this subparagraph by 3.5 percent.

(6) Determine the total pounds of milk in Class IV as follows: (a) multiply the actual weight of each of the several products of Class IV milk by its average butter-

fat test, (b) add together the resulting amounts, (c) subtract the total pounds of butterfat in Class I milk, Class II milk, and Class III milk, computed pursuant to subparagraphs (3) (b), (4) (b), and (5) (b) of this paragraph, and the total pounds of butterfat computed pursuant to (b) of this subparagraph, from the total pounds of butterfat computed pursuant to subparagraph (2) of this paragraph, which resulting quantity shall be allowed as plant shrinkage for the purposes of this paragraph (but in no event shall such plant shrinkage allowance exceed 2 percent of the total receipts of butterfat from producers by the handler) and shall be added to the result obtained in (b) of this subparagraph, and (d) divide the result obtained in (c) of this subparagraph by 3.5 percent.

(7) Determine the classification of milk received from producers as follows:

(i) Subtract pro rata out of each class the quantity of milk received from the handler's own farm.

(ii) Subtract from the total pounds of milk in each class the total pounds of milk which were received from other handlers and used in such class.

(iii) Subtract from the total pounds of milk in each class the total pounds of milk which were received from sources other than producers and handlers and used in such class.

(iv) Except as set forth in paragraph (e) of this section, the result shall be known as the "net pooled milk" in each class.

(e) RECONCILIATION OF UTILIZATION OF MILK BY CLASSES WITH RECEIPTS OF MILK FROM PRODUCERS. (1) If the total utilization of milk in the various classes for any handler, as computed pursuant to paragraph (d) of this section, is less than the receipts of milk from producers, the market administrator shall increase the total pounds of milk in Class IV for such handler by an amount equal to the difference between the receipts of milk from producers and the total utilization of milk by classes for such handler, which result shall be known as the "net pooled milk" in each class.

(2) If the total utilization of milk in the various classes for any handler, as computed pursuant to paragraph (d) of this section, is greater than the receipts of milk from producers, the market administrator shall decrease the total pounds of milk in Class IV for such handler by an

amount equal to the difference between the receipts of milk from producers and the total utilization of milk by classes for such handler, which result shall be known as the "net pooled milk" in each class.

Sec. 941.5 *Minimum prices.* (a) CLASS PRICES. (1) Except as set forth in paragraph (d) of this section and subject to the differentials set forth in paragraphs (b) and (c) of this section, each handler shall pay, at the time and in the manner set forth in Section 941.8, for milk purchased or received by such handler at any plant located not more than 70 miles by rail or highway, whichever is the shortest, from the City Hall in Chicago, not less than the prices set forth in this paragraph. Any handler who purchases or receives, during any delivery period, milk from a cooperative association which is also a handler shall on or before the 15th day after the end of the delivery period pay such cooperative association in full for such milk at not less than the minimum class prices, with appropriate differentials, applicable pursuant to this section.

(2) Class I milk—Add to the price per hundredweight for milk of 3.5 percent butterfat content computed pursuant to the formula set forth in section 1 of article VI of the marketing agreement for evaporated milk issued by the Secretary on May 31, 1935, or the last amendment thereto, if any, 70 cents per hundredweight for the months of July, August, September, October, and November; 55 cents per hundredweight for the months of December, January, February, March, and April; and 45 cents per hundredweight for the months of May and June: Provided, That with respect to Class I milk disposed of under a program approved by the Secretary for the sale or disposition of milk to low-income consumers, including persons on relief, the price shall be $1.395 per hundredweight during delivery periods prior to July 1, 1940, and thereafter $1.63 per hundredweight.

(3) Class II milk—Add to the price per hundredweight for milk of 3.5 percent butterfat content computed pursuant to the formula set forth in section 1 of article VI of the marketing agreement for evaporated milk issued by the Secretary on May 31, 1935, or the last amendment thereto, if any, 32 cents per hundredweight for the months of July, August, September, October, and November; 25 cents per hundredweight for the months of December,

January, February, March, and April; and 20 cents per hundredweight for the months of May and June.

(4) Class III milk—The price per hundredweight for milk containing 3.5 percent butterfat during each delivery period shall be the average, computed by the market administrator, of prices, as reported to the United States Department of Agriculture, paid during such delivery period to farmers at each of the evaporated milk plants where milk is purchased for evaporating purposes at places listed in this subparagraph and for which prices are reported, but in no event shall such price be less than the price computed pursuant to the formula set forth in section 1 of article VI of the marketing agreement for evaporated milk issued by the Secretary on May 31, 1935, or the last amendement thereto.

Location of evaporated milk plants

Mt. Pleasant, Mich.	Berlin, Wis.
Sparta, Mich.	Richland Center, Wis.
Hudson, Mich.	Oconomowoc, Wis.
Wayland, Mich.	Jefferson, Wis.
Coopersville, Mich.	New Glarus, Wis.
Greenville, Wis.	Belleville, Wis.
Black Creek, Wis.	New London, Wis.
Orfordville, Wis.	Manitowoc, Wis.
Chilton, Wis.	West Bend, Wis.

(5) Class IV milk—Multiply by 3.5 the average price per pound of 92-score butter at wholesale in the Chicago market, as reported by the United States Department of Agriculture, for the delivery period during which such milk was received, and add 20 per cent.

(6) In the event the marketing agreement for evaporated milk, issued by the Secretary on May 31, 1935, is suspended or terminated, the formula price to be used in determining the price for Class I milk, Class II milk and Class III milk, in lieu of the formula set forth in section 1 of article VI of the said marketing agreement, shall be calculated by the market administrator as follows: Multiply by 3.5 the average price per pound of 92-score butter at wholesale in the Chicago market as reported by the United States Department of Agriculture for the delivery period during which such milk was received, and add 30 percent.

(b) *Butterfat differential to handlers.* If any handler has purchased or received milk from producers containing

more or less than 3.5 percent butterfat, such handler shall add or deduct, per hundredweight of milk, for each one-tenth of 1 percent butterfat above or below 3.5 percent, an amount equal to the Class IV price computed pursuant to paragraph (a) of this section, divided by 35.

(c) LOCATION ADJUSTMENTS TO HANDLERS. (1) With respect to milk purchased or received from producers at a plant located more than 70 miles by rail or highway, whichever is the shorter, from the City Hall in Chicago, which is classified as Class I milk or Class II milk, there shall be deducted 2 cents per hundredweight and ¼ cent per hundredweight, respectively, for each additional 15 miles or part thereof that such plant is located in excess of 70 miles from the City Hall in Chicago: Provided, That if any handler can prove to the market administrator that the l. c. l. freight rate, approved by the Interstate Commerce Commission, or the State authorities having the power to fix intrastate rail rates, for the movement of cream in 40-quart cans from the shipping point for the plant where such milk is received from producers to the marketing area, is greater than ¼ cent per hundredweight of milk, such actual freight rate shall be allowed such handler on Class II milk, but in no case shall such rate exceed ½ cent per hundredweight of milk. There shall be no location adjustment to handlers with respect to Class III milk or Class IV milk.

(2) For purposes of this paragraph, Class I milk shall be considered to be that milk purchased or received from producers at plants located nearest to the marketing area from which whole milk is shipped to the marketing area: Provided, That when actual shipments of milk to the marketing area by any handler are shown to be in excess of such handler's Class I milk, the location adjustments on Class I milk as provided in this section shall be applied to such milk, up to and including 105 percent of such handler's Class I milk. Class II milk shall be considered to be that milk purchased or received from producers at plants located nearest to the marketing area, after accounting for Class I milk, from which whole milk or cream is shipped to the marketing area.

(d) SALES OUTSIDE THE MARKETING AREA. The price to be paid by a handler for Class I milk disposed of outside the marketing area, in lieu of the price otherwise applicable pursuant to this section, shall be the price, as ascertained

by the market administrator which is being paid in the market where such milk is disposed of, for milk of equivalent use: Provided, That in the event such Class I milk is disposed of outside the 70-mile zone, such price as ascertained by the market administrator shall be adjusted by an amount equal to the carload freight rate approved by the Interstate Commerce Commission for the movement of milk in 40-quart cans from the shipping point for the plant where such milk is received from producers to the railroad delivery point serving the market where such milk is utilized as Class I milk.

Sec. 941.6 *Application of provisions.* (a) HANDLERS WHO ARE ALSO PRODUCERS. (1) No provision hereof shall apply to a handler who is also a producer and who purchases or receives no milk from producers or an association of producers, except that such handler shall make reports to the market administrator at such time and in such manner as the market administrator may request.

(2) The market administrator, in computing the value of milk for any handler pursuant to Sec. 941.7, shall consider as Class IV milk any milk or cream received in bulk by such handler from a handler who distributes a part of his own production. If the receiving handler disposes of such milk or cream for other than Class IV purposes, such handler shall pay to producers, through the producer-settlement fund, the difference between (a) the value of such milk or cream at the Class IV price and (b) the value according to its actual utilization by the handler.

(b) PAYMENT FOR MILK RECEIVED FROM SOURCES OTHER THAN FROM PRODUCERS OR OTHER HANDLERS. If any handler has purchasesd or received milk or cream from sources other than producers or other handlers, the market administrator, in computing the value of milk for such handler pursuant to Sec. 941.7, shall consider such milk or cream as Class IV milk. If the receiving handler uses such milk or cream for other than Class IV purposes, such handler shall pay to producers, through the producer-settlement fund, the difference between (a) the value of such milk or cream at the Class IV price and (b) the value according to its actual utilization by the handler. This provision shall not apply to a handler who purchases or receives milk or cream from sources other than producers or handlers, if such handler can prove to the market administrator that such milk or cream was used for purposes

which did not violate any regulations issued by the various health authorities in the marketing area.

(c) PAYMENT FOR MILK SHOWN AS INVENTORIES OF FROZEN CREAM HELD ON EFFECTIVE DATE OF THIS AMENDED ORDER. If any handler has purchased or received milk from producers, or associations of producers, prior to the effective date of this amended order, the butterfat from which is on hand, on the effective date of this amended order, at a plant in the form of frozen cream, or cream which is subsequently so handled as to be classified as frozen cream, and such butterfat is finally disposed of in the manufacture of a product classified as Class II milk, such handler shall pay to producers, through the producer-settlement fund, the difference between the Class III price in effect for the delivery period during which the milk was received from producers and the price computed as follows: Add 20 cents to the price computed pursuant to the formula set forth in section 1 of article VI of the marketing agreement for evaporated milk, issued by the Secretary on May 31, 1935, for the delivery period during which the milk was received from producers. The market administrator or his representative shall at all times have access to the necessary records to determine the physical presence of the cream and the temperature of the room where stored.

Sec. 941.7 *Determination of uniform price.* (a) NET POOL OBLIGATION OF HANDLERS. Subject to the provisions of Sec. 941.6, the net pool obligation of each handler for milk received from producers during each delivery period shall be a sum of money computed for such delivery period as follows:

(1) Multiply the "net pooled milk" in each class, computed pursuant to Sec. 941.4, by the class price, with appropriate differentials applicable pursuant to Sec. 941.5 (b), (c), and (d), and add together the resulting values;

(2) Deduct, if the average butterfat content of all milk received from producers is in excess of 3.5 percent, and add, if the average butterfat content of all milk received from producers is less than 3.5 percent, the total value of the butterfat differential applicable pursuant to Sec. 941.8(c).

(b) COMPUTATION OF THE UNIFORM PRICE. The market administrator shall compute the uniform price per hundredweight of milk for each delivery period in the following manner:

(1) Combine into one total the net pool obligations of all handlers, computed pursuant to paragraph (a) of this section, who made the reports pursuant to Sec. 941.3(a) (2) for such delivery period;

(2) Add the amount of the location differentials applicable pursuant to Sec. 941.8(b);

(3) Add the amount of cash balance in the producer-settlement fund;

(4) Divide the result by the total quantity of net pooled milk of all handlers whose reports are included in this computation; and

(5) Subtract not less than 4 cents nor more than 5 cents to provide against the contingency of errors in reports and payments or of delinquencies in payments by handlers. The result shall be known as the uniform price for milk containing 3.5 percent butterfat received from producers at plants located within the 70-mile zone.

Sec. 941.8 *Payment for milk.* (a) TIME AND METHOD OF PAYMENT. On or before the 18th day after the end of each delivery period each handler shall pay each producer, for milk purchased or received during the delivery period, an amount of money representing not less than the total value of such milk, at the uniform price per hundredweight, computed pursuant to Sec. 941.7 (b) and subject to the location adjustments and butterfat differential set forth in this section.

(b) LOCATION ADJUSTMENTS TO PRODUCERS. In Making payments to produeers pursuant to paragraph (a) of this section, handlers shall deduct with respect to all milk purchased or received from producers at a plant located more than 70 miles by rail or highway, whichever is the shortest, from the City Hall in Chicago, the amount specified as follows:

	Cents per cwt.
Within 71 to 85 miles	2
Within 86 to 100 miles	4
Within 101 to 115 miles	6
Within 116 to 130 miles	8
Within 131 to 145 miles	10
Within 146 to 160 miles	12
Within 161 to 175 miles	14

For each 15 miles or part thereof beyond 175 miles from the City Hall in Chicago, an additional ½ cent per cwt.

(c) BUTTERFAT DIFFERENTIAL TO PRODUCERS. The uniform price paid to producers shall be plus or minus, as the case may be, 4 cents per hundredweight for each one-tenth of 1 percent above or below 3.5 percent average butterfat content of milk delivered by any producer during any delivery perior.

(d) PRODUCER SETTLEMENT FUND. The market administrator shall establish and maintain a separate fund known as "the producer-settlement fund" into which he shall deposit all payments made by handlers pursuant to paragraphs (e) and (g) and out of which he shall make all payments to handlers pursuant to paragraphs (f) and (g) of this section: Provided, That the market administrator shall offset any such payment due to any handler against payments due from such handler. Immediately after computing the uniform price for each delivery period, the market administrator shall compute the amount by which each handler's net pool obligation, including the payments to producers which are required to be made pursuant to Sec. 941.6, is greater or less than the sum obtained by multiplying such handler's net pooled milk by the uniform price and shall enter such amount on each handler's account as such handler's pool debit or pool credit, as the case may be, and render such handler a transcript of his account.

(e) PAYMENTS TO THE PRODUCER-SETTLEMENT FUND. On or before the 16th day after the end of each delivery period each handler shall make full payment to the market administrator of any pool debit balance shown on the account rendered, pursuant to paragraph (d) of this section, for the preceding delivery period.

(f) PAYMENTS OUT OF THE PRODUCER-SETTLEMENT FUND. On or before the 17th day after the end of each delivery period, the market administrator shall pay to each handler the pool credit balance shown on the account rendered, pursuant to paragraph (d) of this section, if any, for the preceding delivery period, less any unpaid obligations of the handler. If at such time the balance in the producer-settlement fund is insufficient to make all payments pursuant to this paragraph, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the necessary funds are available. No handler who, on the 18th day after the end of each delivery period, has not received the balance

of the payment due him from the market administrator shall be deemed to be in violation of paragraph (a) of this section if he reduces his total payments uniformly to all producers by not more than the amount of the reduction in payment from the producer-settlement fund.

(g) ADJUSTMENTS OF ERRORS IN PAYMENTS. Whenever verification by the market administrator of reports or payments of any handler discloses errors made in payments to the producer-settlement fund pursuant to paragraph (d) of this section, the market administrator shall promptly bill such handler for any unpaid amount and such handler shall, within 5 days, make payment to the market administrator of the amount so billed. Whenever verification discloses that payment is due from the market administrator to any handler, pursuant to paragraph (d) of this section, the market administrator shall, within 5 days, make such payment to such handler. Whenever verification by the market administrator of the payment by a handler to any producer, for milk purchased or received by such handler, discloses payment to such producer of less than is required by this section, the handler shall make up such payment to the producer not later than the time of making payment to producers next following such disclosure.

Sec. 941.9 *Expense of administration.* (a) PAYMENTS BY HANDLERS. As his pro-rata share of the expense of the administration hereof each handler, except those handlers exempt from the provisions hereof as set forth in Sec. 941.6 (a), shall pay to the market administrator, on or before the 18th day after the end of each delivery period, a sum not exceeding 2 cents per hundredweight with respect to all milk purchased or received by him during such delivery period from producers, from sources other than producers, or from other handlers, or produced by him, the exact sum to be determined by the market administrator, subject to review by the Secretary: Provided, That each handler which is a cooperative association shall pay such pro-rata share of expense of administration only on that milk of producers actually received at a plant of such cooperative association, or caused to be delivered by such cooperative association to a plant from which no milk or cream is disposed of in the marketing area.

(b) SUITS BY MARKET ADMINISTRATOR. The market administrator may maintain a suit in his own name against

any handler for the collection of such handler's pro-rata share of expense set forth in this section.

Sec. 941.10 *Marketing services.* (a) MARKETING SERVICE DEDUCTION. In making payments to producers pursuant to Sec. 941.8, each handler, with respect to all milk received from each producer during each delivery period, at a plant not operated by a cooperative association of which such producer is a member, shall, except as set forth in paragraph (b) of this section, deduct 3 cents per hundredweight, or such lesser amount as the market administrator shall determine to be sufficient, such determination to be subject to review by the Secretary, and shall, on or before the 18th day after the end of such delivery period, pay such deductions to the market administrator. Such moneys shall be expended by the market administrator for verification of weights, samples, and tests of milk received from such producers and in providing for market information to such producers. The market administrator may contract with an association or associations of producers for the furnishing of the whole or any part of such services to, or with respect to the milk received from such producers.

(b) MARKETING SERVICE DEDUCTIONS WITH RESPECT TO MEMBERS OF A PRODUCERS' COOPERATIVE ASSOCIATION. In the case of producers whose milk is received at a plant not operated by a cooperative association of which such producers are members and for whom a cooperative association is actually performing the services set forth in paragraph (a) of this section, each handler shall, in lieu of the deductions specified in paragraph (a) of this section, make such deductions from payments made pursuant to Sec. 941.8 as may be authorized by such producers, and pay over on or before the 18th day after the end of each delivery period such deductions to the associations rendering such service of which such producers are members.

Sec. 941.11 *Market advisory committee.* (a) Subsequent to the effective date hereof, the market administrator may select a representative committee of the industry for purposes (1) of recommendation of amendments to this order, and (2) for conference, counsel, and advice.

Sec. 941.12 *Effective time, suspension, or termination of order.* (a) EFFECTIVE TIME. The provisions hereof, or any amendment hereto, shall become effective at such

time as the Secretary may declare and shall continue in force until suspended, or terminated, pursuant to paragraph (b) of this section.

(b) SUSPENSION OR TERMINATION OF ORDER. The Secretary may suspend or terminate this order or any provision hereof whenever he finds that this order or any provision hereof obstructs or does not tend to effectuate the declared policy of the act. This order shall, in any event, terminate whenever the provisions of the act authorizing it cease to be in effect.

(c) CONTINUING POWER AND DUTY OF THE MARKET ADMINISTRATOR. If upon the suspension or termination of any or all provisions hereof, there are any obligations arising hereunder, the final accrual or ascertainment of which requires further acts by any handler, by the market administrator, or by any other person, the power and duty to perform such further acts shall continue notwithstanding such suspension or termination: Provided, That any such acts required to be performed by the market administrator shall, if the Secretary so directs, be performed by such other person, persons, or agency as the Secretary may designate.

(1) The market administrator, or such other person as the Secretary may designate, shall (a) continue in such capacity until removed by the Secretary, (b) from time to time account for all receipts and disbursements, and when so directed by the Secretary deliver all funds on hand, together with the books and records of the market administrator or such person, to such person as the Secretary shall direct, and (c) if so directed by the Secretary execute such assignments or other instruments necessary or appropriate to vest in such person full title to all funds, property, and claims vested in the market administrator or such person pursuant thereto.

(d) LIQUIDATION AFTER SUSPENSION OR TERMINATION. Upon the suspension or termination of any or all provisions hereof the market administrator, or such person as the Secretary may designate, shall, if so directed by the Secretary, liquidate the business of the market administrator's office and dispose of all funds and property then in his possession or under his control, together with claims for any funds which are unpaid or owing at the time of such suspension or termination. Any funds collected pursuant to the provisions hereof, over and above the amounts

necessary to meet outstanding obligations and the expenses necessarily incurred by the market administrator or such person in liquidating and distributing such funds, shall be distributed to the contributing handlers and producers in an equitable manner.

Now, Therefore, H. A. Wallace, Secretary of Agriculture, acting under the provisions of Public Act No. 10, 73d Congress, as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, for the purposes and within the limitations therein contained and not otherwise, hereby executes and issues in duplicate this order, as amended, under his hand and the official seal of the Department of Agriculture, in the city of Washington, District of Columbia, on this 21st day of June 1940, and declares this order, as amended, to be effective on and after the 1st day of July 1940.

H. A. Wallace

(Seal) *Secretary of Agriculture.*

14 EXHIBIT "C."

Order No. 41, as Amended Issued June 27, 1941

UNITED STATES DEPARTMENT OF AGRICULTURE

SURPLUS MARKETING ADMINISTRATION

T. 7, Ch. IX, Code of Fed. Regs.

Marketing Orders—Part 941

ORDER, AS AMENDED, REGULATING THE HANDLING OF MILK IN THE CHICAGO, ILLINOIS, MARKETING AREA[1]

CONTENTS

Sec. 941.0 Findings.
941.1 Definitions.
941.2 Market administrator.
941.3 Reports of handlers.
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[1] Section 941.0 to and including Section 941.12 issued under the authority contained in 48 Stat. 31 (1933), 7 U. S. C. 601 et seq. (1934); 49 Stat. 750 (1935); 50 Stat. 246 (1937), 7 U. S. C. 601 et seq. (Supp. IV, 1938).

941.5 Minimum prices.
941.6 Application of provisions.
941.7 Determination of uniform price to producers.
941.8 Payments for milk.
941.9 Expense of administration.
941.10 Marketing services.
941.11 Market advisory committee.
941.12 Effective time, suspension, or termination of order.

Pursuant to the powers conferred upon the Secretary by Public Act No. 10, 73d Congress, as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937 (50 Stat. 246), the Secretary of Agriculture of the United States tentatively approved, on May 22, 1940, a marketing agreement and issued, effective July 1, 1940, an order, as amended, both of which regulate the handling of milk in the Chicago, Illinois, marketing area.

The Secretary, having reason to believe that amendments to said tentatively approved marketing agreement and to said order, as amended, would tend to effectuate the declared policy of said act, gave, on the 31st day of May 1941, notice of a public hearing which was held at Chicago, Illinois, beginning on April 9, 1941, at which time and place all interested parties were afforded an opportunity to be heard on certain proposed amended provisions of the tentatively approved marketing agreement and of the order, as amended.

After such hearing, handlers of more than fifty percent of the volume of milk covered by this order, as amended, which is marketed within the Chicago, Illinois, marketing area, refused or failed to sign a tentatively approved marketing agreement, as amended, relating to the handling of milk in such marketing area.

The requirements of section 8c(9) of said act have been complied with.

The Secretary finds, upon the evidence introduced at the above-mentioned public hearing, said findings being in addition to findings made upon the evidence introduced at the original hearing on said order and on said order, as amended, and being in addition to the other findings and determinations made prior to or at the time of the original

issuance of said order (which findings are hereby ratified and affirmed, save only as such findings are in conflict with the findings hereinafter set forth):

Section 941.0 *Findings.* 1. That the prices calculated to give milk produced for sale in said marketing area a purchasing power equivalent to the purchasing power of such milk, as determined pursuant to sections 2 and 8e of said act, are not reasonable in view of the price of feeds, the available supplies of feed, and other economic conditions which affect market supply of and demand for such milk, and that the minimum prices set forth in this order, as amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest;

2. That the order, as amended, regulates the handling of milk in the same manner as and is applicable only to handlers defined in a marketing agreement, as amended, upon which a hearing has been held; and

3. That the issuance of this order, as amended, and all of its terms and conditions, will tend to effectuate the declared policy of the act:

Now, Therefore, Paul H. Appleby, Acting Secretary of Agriculture, pursuant to the powers conferred upon him by said act, hereby orders that such handling of milk in the Chicago, Illinois, marketing area, as is in the current of interstate commerce, or as directly burdens, obstructs, or affects interstate commerce, shall, from the effective date hereof, be in compliance with the following terms and conditions:

Sec. 941.1 *Definitions.* (a) TERMS. The following terms as used herein shall have the following meanings:

(1) The term "Chicago, Illinois, marketing area," hereinafter called the "marketing area," means the territory lying within the corporate limits of the cities of Chicago and Evanston, and the territory lying within the corporate limits of the villages of Wilmette, Kenilworth, Winnetka, Glencoe, and Oak Park, all in the State of Illinois.

(2) The term "person" means any individual, partnership, corporation, association, or any other business unit.

(3) The term "approved plant" means any plant which is approved by any health authority for the receiving of milk which may be disposed of as Class I milk, as defined in Sec. 941.4, in the marketing area.

(4) The term "producer" means any person who produces milk which is received by a handler at an approved plant, or who produces milk which, upon proof furnished satisfactory to the market administrator, is qualified to be received at such approved plant.

(5) The term "handler" means any person, who, on his own behalf or on behalf of others, purchases or receives milk from producers, associations of producers, other handlers, persons producing milk not qualified to be received at an approved plant, or persons operating an unapproved plant, all, or a portion, of which milk is disposed of as Class I milk or Class II milk in the marketing area; and who, on his own behalf or on behalf of others engages in such handling of milk, or cream therefrom, as is in the current of interstate commerce or which directly burdens, obstructs, or affects interstate commerce in milk and its products. This definition shall be deemed to include any person who receives milk from producers at an approved plant from which no milk or cream is disposed of in the marketing area, and any cooperative association or handler with respect to the milk of any producer which it causes to be delivered to a plant from which no milk or cream is disposed of in the marketing area, for the account of such cooperative association or handler.

(6) The term "market administrator" means the agency which is described in Sec. 941.2 for the administration hereof.

(7) The term "delivery period" means the current marketing period from the first to the last day of each month, both inclusive.

(8) The term "cooperative association" means any cooperative association of producers which the Secretary determines (a) to have its entire activities under the control of its members, and (b) to have and to be exercising full authority in the sale of milk of its members.

(9) The term "frozen cream" means milk the butterfat from which is held in an approved cold storage warehouse at an average temperature below zero degrees Fahrenheit for seven (7) consecutive days, as shown by charts of a recording thermometer.

(10) The term "act" means Public Act No. 10, 73d Congress, as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937.

(11) The term "Secretary" means the Secretary of Agriculture of the United States.

Sec. 941.2 *Market administrator.* (a) SELECTION, REMOVAL, AND BOND. The agency for the administration hereof shall be a market administrator who shall be a person selected and subject to removal by the Secretary. The market administrator shall, within 45 days following the date upon which he enters upon his duties, execute and deliver to the Secretary a bond, conditioned upon the faithful performance of his duties, in an amount and with surety thereon satisfactory to the Secretary.

(b) COMPENSATION. The market administrator shall be entitled to such reasonable compensation as shall be determined by the Secretary.

(c) POWERS. The market administrator shall have the power: (1) to administer the terms and provisions hereof, and (2) report to the Secretary complaints of violations of this order.

(d) DUTIES. The market administrator, in addition to the duties hereinafter described shall:

(1) Keep such books and records as will clearly reflect the transactions provided for herein;

(2) Submit his books and records to examination by the Secretary at any and all times;

(3) Furnish such information and such verified reports as the Secretary may request;

(4) Obtain a bond with reasonable security thereon covering each employee who handles funds entrusted to the market administrator;

(5) Publicly disclose, after reasonable notice, the name of any person who has not made reports pursuant to Sec. 941.3, or made payments required by Sec. 941.8;

(6) Prepare and disseminate, for the benefit of producers, consumers, and handlers, such statistics and information concerning the operation hereof as do not reveal confidential information;

(7) Employ and fix the compensation of such persons as may be necessary to enable him to administer the terms and provisions hereof; and

(8) Pay, out of the funds received pursuant to Sec. 941.9, the cost of his bond and of the bonds of such of his employees as handle funds entrusted to the market administrator, his own compensation, and all other ex-

penses which will necessarily be incurred by him for the maintenance and functioning of his office and the performance of his duties.

(e) ANNOUNCEMENT OF PRICES. The market administrator shall compute and publicly announce prices as follows:

(1) Not later than the 5th day after the end of each delivery period, the prices for all classes of milk pursuant to Sec. 941.5 (a), the differentials pursuant to Sec. 941.5 (c), and the Class I prices applicable pursuant to Sec. 941.5 (e).

(2) Not later than the 14th day after the end of each delivery period, the uniform price computed pursuant to Sec. 941.7 (b).

Sec. 941.3 *Reports of handlers.* (a) SUBMISSION OF REPORTS. Each handler shall report to the market administrator, in the detail and on forms prescribed by the market administrator, as follows:

(1) On or before the 7th day after the end of each delivery period, each handler who purchases or receives milk from associations of producers and other handlers, with respect to all milk purchased or received from such sources, shall submit to the market administrator and to the association of producers or handlers from whom the milk was purchased, a record of the utilization of such milk, classified pursuant to Sec. 941.4.

(2) On or before the 10th day after the end of each delivery period, the quantity, butterfat test, and butterfat pounds of (a) the receipts of milk at each plant from producers, (b) the receipts of milk at each plant from other handlers, (c) the receipts of milk or cream from sources other than producers and handlers, if any, (d) the receipts at each plant of the milk produced by him, if any, and (e) the utilization of all receipts of milk for the delivery period.

(3) On or before the 10th day after the end of each delivery period the information required with respect to producer additions and producer withdrawals, and changes in the names of farm operators.

(4) On or before the 10th day after the end of each delivery period, the sale or disposition of milk outside the marketing area, pursuant to Sec. 941.5 (e) as follows: (a) the amount and the utilization of such milk, (b) the

butterfat test thereof, (c) the point of use, (d) the plant from which such milk is shipped, and (e) such other information with respect thereto as the market administrator may require.

(5) On or before the 25th day after the end of each delivery period his producer payroll, which shall show for each producer (a) the total delivery of milk with the average butterfat test thereof, (b) the net amount of payment to such producer made pursuant to Sec. 941.8, (c) any deductions and charges made by the handler, and (d) such other information with respect thereto as the market administrator may require.

(b) VERIFICATION OF REPORTS AND PAYMENTS. The market administrator shall verify all reports and payments of each handler by audit of such handler's records, and of the records of any other handler of person upon whose disposition of milk such handler claims classification. Each handler shall keep adequate records of receipts and utilization of milk and shall, during the usual hours of business, make available to the market administrator or his representative such records and facilities as will enable the market administrator to:

(1) Verify the receipts and disposition of all milk required to be reported pursuant to this section, and, in case of errors or omissions, ascertain the correct figures;

(2) Weigh, sample, and test for butterfat content the milk received from producers and any product of milk upon which classification depends; and

(3) Verify the payments to producers prescribed in Sec. 941.8.

Sec. 941.4. *Classification of milk.* (a) BASIS OF CLASSIFICATION. All milk purchased or received by a handler from producers, associations of producers, and other handlers, including milk produced by him, if any, and including milk or cream purchased or received from sources other than producers or handlers, shall be reported by the handler in the classes set forth in paragraph (b) of this section: Provided, That (1) any milk moving as fluid milk from any handler's plant to a plant of a nonhandler who distributes fluid milk shall be classified as Class I milk and any cream moved in the form of cream to such nonhandler shall be classified as Class II milk, except for milk or cream in excess of the amount of Class I or Class II milk distributed by the nonhandler; (2)

any milk or cream moving from a handler's plant to a plant of a nonhandler, who does not distribute fluid milk shall be classified according to its use by such nonhandler subject to verification by the market administrator; (3) any milk moving from the handler's plant where the milk was first received from producers to the plant of a second handler, which has manufacturing facilities, shall be Class I milk if moved from the second handler's plant as fluid milk, and Class II if moved as cream; and (4) any milk moving from the handler's plant where the milk was first received from producers to a second handler's plant which has no manufacturing facilities may be classified according to its utilization by a third handler: And provided further, That in the case of the sale of milk or cream by a handler to a person who is a handler under another Federal milk agreement or order, such milk may be classified on a prorata basis.

(b) CLASSES OF UTILIZATON. Subject to the conditions set forth in paragraph (a) of this section, the classes of utilization of milk shall be as follows:

(1) Class I milk shall be all milk disposed of in the form of fluid milk, excluding bulk milk disposed of to bakeries, soup companies, and candy manufacturing establishments, but including bulk milk disposed of to hotels, restaurants, and other retail food establishments, and all milk not accounted for as Class II milk, Class III milk, or Class IV milk.

(2) Class II milk shall be all milk, except skim milk, disposed of in the form of flavored milk and flavored milk drinks, and all milk, the butterfat from which is disposed of in the form of sweet or sour cream, cottage cheese, buttermilk, frozen cream, ice cream, and ice cream mix.

(3) Class III milk shall be all milk the butterfat from which is used to produce a milk product other than one of those specified in Class II and Class IV, and all bulk milk disposed of to bakeries, soup companies, and candy manufacturing establishments.

(4) Class IV milk shall be all milk the butterfat from which is used to produce butter and cheese, except cottage cheese, and all milk accounted for as actual plant shrinkage: Provided, That such plant shrinkage shall not exceed 2 percent of the total receipts of milk from producers and from the handlers' own production. Any

handler whose report claimed the original classification of milk in this class shall be liable under the provisions of Sec. 941.8 (g) for the difference between the Class IV and Class II prices for the delivery period in which the Class IV classification was claimed on any such milk, if the butterfat used in the production of butter is subsequently used in the production of ice cream or ice cream mix.

(c) RESPONSIBILITY OF HANDLERS IN ESTABLISHING THE CLASSIFICATION OF MILK. In establishing the classification of milk as required in paragraph (b) of this section, the responsibilities of handlers in establishing the classification of milk received by them shall be as follows:

(1) In establishing the classification of any milk received by a handler from producers, the burden rests upon the handler who receives the milk from producers to account for the milk and to prove to the market administrator that such milk should not be classified as Class I milk.

(2) With respect to milk, or skimmed milk, disposed of to another handler, the burden rests upon the handler who purchased the milk from producers to account for the milk, or skimmed milk, and to prove to the market administrator that such milk, or skimmed milk, should not be classified as Class I milk: Provided, That if verification by the market administrator discloses a higher utilization than that reported pursuant to Sec. 941.3 (a) (1) for milk purchased by a handler from a cooperative association, the market administrator shall notify the purchasing handler and such handler shall within 5 days after notification by the market administrator make adjustment to such cooperative association on the basis of such higher utilization as verified by the market administrator.

(d) COMPUTATION OF MILK IN EACH CLASS. For each delivery period, each handler shall compute, in the manner and on forms prescribed by the market administrator, the amount of milk in each class, as defined in paragraph (b) of this section, as follows:

(1) Determine the total pounds of milk (a) received from producers, (b) produced by him, if any, (c) received from other handlers, if any, (d) received from other sources, if any, and (e) add together the resulting amounts.

(2) Determine the total pounds of butterfat received as follows: (a) multiply the weight of the milk received

from producers by its average butterfat test, (b) multiply the weight of the milk produced by him, if any, by its average butterfat test, (c) multiply the weight of the milk received from other handlers, if any, by its average butterfat test, (d) multiply the weight of the milk received from other sources, if any, by its average butterfat test, and (e) add together the resulting amounts.

(3) Determine the total pounds of milk in Class I as follows: (a) convert to quarts the quantity of milk disposed of in the form of milk, excluding bulk milk disposed of to bakeries, soup companies, and candy manufacturing establishments, and multiply by 2.15, (b) multiply the result by the average butterfat test of such milk, and (c) if the quantity of butterfat so computed when added to the pounds of butterfat in Class II milk, Class III milk, and Class IV milk, computed pursuant to subparagraphs (4)(b), (5)(b), and (6)(c) of this paragraph, is less than the total pounds of butterfat received, computed in accordance with subparagraph (2) of this paragraph, an amount equal to the difference shall be divided by 3.5 percent and added to the quantity of milk determined pursuant to (a) of this subparagraph.

(4) Determine the total pounds of milk in Class II as follows: (a) multiply the actual weight of each of the several products of Class II milk by its average butterfat test, (b) add together the resulting amounts, and (c) divide the result obtained in (b) of this subparagraph by 3.5 percent.

(5) Determine the total pounds of milk in Class III as follows: (a) multiply the actual weight of each of the several products of Class III milk, including all bulk milk disposed of to bakeries, soup companies, and candy manufacturing establishments by its average butterfat test, (b) add together the resulting amounts, and (c) divide the result obtained in (b) of this subparagraph by 3.5 percent.

(6) Determine the total pounds of milk in Class IV as follows: (a) multiply the actual weight of each of the several products of Class IV milk by its average butterfat test, (b) add together the resulting amounts, (c) subtract the total pounds of butterfat in Class I milk, Class II milk, and Class III milk, computed pursuant to subparagraphs (3)(b), (4)(b), and (5)(b) of this paragraph, and the total pounds of butterfat computed pursuant to (b) of this subparagraph, from the total pounds of butterfat com-

puted pursuant to subparagraph (2) of this paragraph, which resulting quantity shall be allowed as plant shrinkage for the purposes of this paragraph (but in no event shall such plant shrinkage allowance exceed 2 percent of the total receipts of butterfat from producers by the handler) and shall be added to the result obtained in (b) of this subparagraph, and (d) divide the result obtained in (c) of this subparagraph by 3.5 percent.

(7) Determine the classification of milk received from producers as follows:

(i) Subtract from the total pounds of milk in each class the total pounds of milk which were received from other handlers and used in such class.

(ii) Subtract from the total pounds of milk in each class the total pounds of milk which were received from sources other than producers and handlers and used in such class.

(iii) Subtract pro rata out of the remaining milk in each class the quantity of milk received from the handler's own farm.

(iv) Except as set forth in paragraph (e) of this section, the result shall be known as the "net pooled milk" in each class.

(e) In the event of a difference between the total quantity of milk utilized in several classes as computed pursuant to paragraph (d) of this section and the quantity of milk received from producers, except for excess milk or milk equivalent of butterfat pursuant to Sec. 941.6 (c), such difference shall be reconciled as follows:

(1) If the total utilization of milk in the various classes for any handler, as computed pursuant to paragraph (d) of this section, is less than the receipts of milk from producers, the market administrator shall increase the total pounds of milk in Class IV for such handler by an amount equal to the difference between the receipts of milk from producers and the total utilization of milk by classes for such handler, which result shall be known as the "net pooled milk" in each class.

(2) If the total utilization of milk in the various classes for any handler, as computed pursuant to paragraph (d) of this section, is greater than the receipts of milk from producers, the market administrator shall decrease the total pounds of milk in Class IV for such handler by an amount equal to the difference between the receipts of

milk from producers and the total utilization of milk by classes for such handler, which result shall be known as the "net pooled milk" in each class.

Sec. 941.5 *Minimum prices.* (a) CLASS PRICES. (1) Except as set forth in paragraph (e) of this section and subject to the differentials set forth in paragraphs (c) and (d) of this section, each handler shall pay, at the time and in the manner set forth in Sec. 941.8, for milk purchased or received by such handler at any plant located not more than 70 miles by rail or highway, whichever is the shorter, from the City Hall of Chicago, not less than the prices set forth in this paragraph. Any handler who purchases or receives, during any delivery period, milk from a cooperative association which is also a handler shall, on or before the 15th day after the end of the delivery period, pay such cooperative association in full for such milk at not less than the minimum class prices, with appropriate differentials, applicable pursuant to this section.

(2) Class I milk—Add to the price per hundredweight for milk of 3.5 percent butterfat content, computed pursuant to the formula set forth in paragraph (b) of this section, 70 cents per hundredweight for the months of July, August, September, October, and November; 55 cents per hundredweight for the months of December, January, February, March, and April; and 45 cents per hundredweight for the months of May and June: Provided, That with respect to Class I milk disposed of under a program approved by the Secretary for the sale or disposition of milk to low-income consumers, including persons on relief, the price shall be $1.75 per hundredweight.

(3) Class II milk—Add to the price per hundredweight for milk of 3.5 percent butterfat content, computed pursuant to the formula set forth in paragraph (b) of this section, 32 cents per hundredweight for the months of July, August, September, October, and November; 25 cents per hundredweight for the months of December, January February, March, and April; and 20 cents per hundredweight for the months of May and June.

(4) Class III milk—The price per hundredweight for milk containing 3.5 percent butterfat during each delivery period shall be the average, computed by the market administrator, of prices, as reported to the United States Department of Agriculture, paid during such delivery period to farmers at each of the places or evaporated milk

plants where milk is purchased or received for evaporating purposes at places listed in this subparagraph and for which prices are reported, but in no event shall such price be less than the price computed pursuant to the formula set forth in paragraph (b) of this section.

Location of evaporated milk plants and places

Mt. Pleasant, Mich.	Berlin, Wis.
Sparta, Mich.	Richland Center, Wis.
Hudson, Mich.	Oconomowoc, Wis.
Wayland, Mich.	Jefferson, Wis.
Coopersville, Mich.	New Glarus, Wis.
Greenville, Wis.	Belleville, Wis.
Black Creek, Wis.	New London, Wis.
Orfordville, Wis.	Manitowoc, Wis.
Chilton, Wis.	West Bend, Wis.

(5) Class IV milk—Multiply by 3.5 the average price per pound of 92-score butter at wholesale in the Chicago market, as reported by the United States Department of Agriculture for the delivery period during which such milk was received, and add 20 percent: Provided, That such price shall be subject to the following adjustment: (1) Add 3½ cents per hundredweight for each full one-half cent that the price of dry skim milk for human consumption is above 6½ cents per pound, (2) subtract 3½ cents per hundredweight for each full one-half cent that the price of such dry skim milk is below 5 cents per pound. For purposes of this paragraph, the price per pound of such dry skim milk to be used in determining such adjustment in the Class IV price shall be the average of the carlot prices for dry skim milk for human consumption as published by the United States Department of Agriculture for Chicago or for a Chicago area during the delivery period, including in such average the quotations published for any ffactional part of the previous delivery period which were not published and available for the price determination of such dry skim milk for the previous delivery period; and in the absence of such published quotations for Chicago or a Chicago area, the average of the carlot price quotations for such dry skim milk by the United States Department of Agriculture for New York shall be used.

(b) BASIC FORMULA TO BE USED IN DETERMINING CLASS I AND CLASS II PRICES. The basic formula to be used in de-

termining the Class I and Class II prices, set forth in this section, per hundredweight of milk shall be determined for each delivery period as follows:

(1) Multiply the average wholesale price per pound of 92-score butter at Chicago for said delivery period as reported by the United States Department of Agriculture by six (6).

(2) Add 2.4 times the average weekly prevailing price per pound of "Twins" during said delivery period on the Wisconsin Cheese Exchange at Plymouth, Wisconsin: Provided, That if the price of "Twins" is not quoted on the Wisconsin Cheese Exchange the weekly prevailing price of "Cheddars" shall be deemed to be the prevailing price for "Twins" and shall be used in determining the price pursuant to this paragraph.

(3) Divide by seven (7), the sum so determined hereafter referred to in this paragraph as the "combined butter and cheese value."

(4) To the combined butter and cheese value add 30 percent thereof.

(5) Multiply the sum computed in subparagraph (4) above by 3.5, the result of which shall be the basic formula price per hundredweight of milk in determining Class I and Class II prices.

(c) BUTTERFAT DIFFERENTIAL TO HANDLERS. If any handler has purchased or received milk from producers containing more or less than 3.5 percent butterfat, such handler shall add or deduct, per hundredweight of milk, for each one-tenth of 1 percent butterfat above or below 3.5 percent, an amount equal to the Class IV price computed pursuant to paragraph (a) of this section, divided by 35.

(d) LOCATION ADJUSTMENTS TO HANDLERS. (1) With respect to milk purchased or received from producers at a plant located more than 70 miles by rail or highway, whichever is the shorter, from the City Hall in Chicago, which is classified as Class I milk or Class II milk, there shall be deducted 2 cents per hundredweight and ¼ cent per hundredweight, respectively, for each additional 15 miles or part thereof that such plant is located in excess of 70 miles from the City Hall in Chicago: Provided, that no such deduction shall apply to unaccounted for milk classified as Class I milk pursuant to paragraph (c) of Sec. 941.4 (d)(3), and such unaccounted for milk shall be considered to have been received at the most distant plant

at which the handler receives milk from producers: Provided further, That if any handler can prove to the market administrator that the l. c. l. freight rate, approved by the Interstate Commerce Commission, or the State authorities having the power to fix intrastate rail rates, for the movement of cream in 40-quart cans from the shipping point for the plant where such milk is received from producers to the marketing area, is greater than ¼ cent per hundredweight of milk, such actual freight rate shall be allowed such handler on Class II milk, but in no case shall such rate exceed ½ cent per hundredweight of milk. There shall be no location adjustment to handlers with respect to Class III milk or Class IV milk.

(2) For purposes of this paragraph, Class I milk shall be considered to be that milk purchased or received from producers at plants located nearest to the marketing area from which whole milk is shipped to the marketing area: Provided, That when actual shipments of milk to the marketing area by any handler from two or more plants located in different zones are shown to be in excess of such handler's Class I milk, the location adjustment on Class I milk as provided in this section shall be applied to such milk up to and including 110 percent of such handler's Class I milk. Class II milk shall be considered to be that milk purchased or received from producers at plants located nearest to the marketing area, after accounting for Class I milk, from which whole milk or cream is shipped to the marketing area: Provided, That upon proof satisfactory to the market administrator that Class II milk was received from producers at a more distant plant location, adjustment shall be allowed from the plant at which such Class II milk was received from producers.

(e) SALES OUTSIDE THE MARKETING AREA. (1) The price to be paid by a handler for Class I milk disposed of outside the marketing area, in lieu of the price otherwise applicable pursuant to this section and except as provided in subparagraph (2) of this paragraph, shall be the price, as ascertained by the market administrator, which is being paid for milk of equivalent use in the market where such milk is disposed of: Provided, That in the event such Class I milk is disposed of outside the 70-mile zone, such Class I price, as ascertained by the market administrator, shall be subject to a transportation adjustment of 2 cents per hundredweight of such milk for every 15 miles or fraction

thereof up to and including 105 miles and thereafter 1 cent for every 10 miles or fraction thereof from the shipping point for the plant where such milk is received from producers to the market where such milk is utilized as Class I milk: Provided further, That such Class I price, as ascertained by the market administrator, less the adjustment for transportation, shall not be lower than the Class I price, f. o. b. 70-mile zone, as set forth in Sec. 941.5 (a)(2) minus 20 cents.

(2) The price to be paid by a handler for Class I milk disposed of outside the marketing area for which no price can be ascertained on the basis provided for in subparagraph (1) of this paragraph, including Class I milk disposed of to Government institutions and establishments on a basis of bids, shall be the price for Class I milk set forth in Sec. 941.5 (a)(2) applicable for the plant at which such milk is received from producers, which price shall not be subject to adjustment for transportation as provided in subparagraph (1) of this paragraph.

Sec. 941.6 *Application of provisions.* (a) HANDLERS WHO ARE ALSO PRODUCERS. No provision hereof shall apply to a handler whose sole sources of supply are receipts from his own production and from other handlers, except that such handlers shall make reports to the market administrator at such time and in such manner as the market administrator may request.

(b) PAYMENT FOR MILK RECEIVED FROM SOURCES DETERMINED AS OTHER THAN FROM PRODUCERS OR OTHER HANDLERS. If any handler has purchased or received milk or butterfat from sources determined as other than producers or other handlers, the market administrator, in computing the value of milk for such handler pursuant to Sec. 941.7, shall consider such milk or the milk equivalent of such butterfat as Class IV milk. If the receiving handler uses such milk or butterfat for other than Class IV purposes, such handler shall pay to producers, through the producer-settlement fund, the difference between (a) the value of such milk or butterfat at the Class IV price and (b) the value according to its actual utilization by the handler. This provision shall not apply to milk or butterfat from sources determined as other than producers or handlers, if such handler can prove to the market administrator that such milk or butterfat was used for purposes which

did not violate any regulations issued by the various health authorities in the marketing area.

(c) PAYMENT FOR EXCESS MILK OR BUTTERFAT. In the event that a handler, after subtracting receipts from his own production, receipts from other handlers, and receipts from sources determined as other than producers or other handlers, has disposed of milk and/or butterfat in excess of the milk and/or butterfat which, on the basis of his reports, has been credited to his producers as having been delivered by them, such handler shall pay to producers, through the producer-settlement fund, the value of such milk and/or the milk equivalent of such butterfat in accordance with its utilization.

Sec. 941.7 *Determination of uniform price.* (a) NET POOL OBLIGATION OF HANDLERS. Subject to the provisions of Sec. 941.6, the net pool obligation of each handler for milk received from producers during each delivery period shall be a sum of money computed for such delivery period as follows:

(1) Multiply the "net pooled milk" in each class, computed pursuant to Sec. 941.4, by the class price, with appropriate differentials applicable pursuant to Sec. 941.5 (c), (d), and (e), and add together the resulting values.

(2) Deduct, if the average butterfat content of all milk received from producers is in excess of 3.5 percent, and add, if the average butterfat content of all milk received from producers is less than 3.5 percent, the total value of the butterfat differential applicable pursuant to Sec. 941.8 (c).

(b) COMPUTATION OF THE UNIFORM PRICE. The market administrator shall compute the uniform price per hundredweight of milk for each delivery period in the following manner:

(1) Combine into one total the net pool obligations of all handlers, computed pursuant to paragraph (a) of this section, who made the reports pursuant to Sec. 941.3 (a) (2) for such delivery period;

(2) Add the amount of the location differentials applicable pursuant to Sec. 941.8 (b);

(3) Add the amount of cash balance in the producer-settlement fund;

(4) Divide the result by the total quantity of net pooled milk of all handlers whose reports are included in this computation; and

(5) Subtract not less than 4 cents nor more than 5 cents to provide against the contingency of errors in reports and payments or of delinquencies in payments by handlers. The result shall be known as the uniform price for milk containing 3.5 percent butterfat received from producers at plants located within the 70-mile zone.

Sec. 941.8 *Payment for milk.* (a) TIME AND METHOD OF PAYMENT. On or before the 18th day after the end of each delivery period each handler shall pay each producer, for milk purchased or received during the delivery period, an amount of money representing not less than the total value of such milk, at the uniform price per hundredweight, computed pursuant to Sec. 941.7 (b) and subject to the location adjustments and butterfat differential set forth in this section.

(b) LOCATION ADJUSTMENTS TO PRODUCERS. In making payments to producers pursuant to paragraph (a) of this section, handlers shall deduct with respect to all milk purchased or received from producers, at a plant located more than 70 miles by rail or highway, whichever is the shorter, from the City Hall in Chicago, the amount specified as follows:

	Cents per cwt.
Within 70.1 to 85 miles	2
Within 85.1 to 100 miles	4
Within 100.1 to 115 miles	6
Within 115.1 to 130 miles	8
Within 130.1 to 145 miles	10
Within 145.1 to 160 miles	12
Within 160.1 to 175 miles	14

For each 15 miles or part thereof beyond 175 miles from the City Hall in Chicago, an additional ½ cent per hundredweight.

(3) BUTTERFAT DIFFERENTIAL TO PRODUCERS. The uniform price paid to producers shall be plus or minus, as the case may be, 4 cents per hundredweight for each one-tenth of 1 percent above or below 3.5 percent average butterfat content of milk delivered by any producer during any delivery period.

(d) PRODUCER-SETTLEMENT FUND. The market administrator shall establish and maintain a separate fund known

as the "producer-settlement fund" into which he shall deposit all payments made by handlers pursuant to paragraphs (e) and (g) and out of which he shall make all payments to handlers pursuant to paragraphs (f) and (g) of this section: Provided, That the market administrator shall offset any such payment due to any handler against payments due from such handler. Immediately after computing the uniform price for each delivery period, the market administrator shall compute the amount by which each handler's net pool obligation, including the payments to producers which are required to be made pursuant to Sec. 941.6, is greater or less than the sum obtained by multiplying such handler's net pooled milk by the uniform price and shall enter such amount on each handler's account as such handler's pool debit or pool credit, as the case may be, and render such handler a transcript of his account.

(e) PAYMENTS TO THE PRODUCER-SETTLEMENT FUND. On or before the 16th day after the end of each delivery period each handler shall make full payment to the market administrator of any pool debit balance shown on the account rendered, pursuant to paragraph (d) of this section, for the preceding delivery period.

(f) PAYMENTS OUT OF THE PRODUCER-SETTLEMENT FUND. On or before the 17th day after the end of each delivery period, the market administrator shall pay to each handler the pool credit balance shown on the account rendered, pursuant to paragraph (d) of this section, if any, for the preceding delivery period, less any unpaid obligations of the handler. If at such time the balance in the producer-settlement fund is insufficient to make all payments pursuant to this paragraph, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the necessary funds are available. No handler, who, on the 18th day after the end of each delivery period, has not received the balance of the payment due him from the market administrator shall be deemed to be in violation of paragraph (a) of this section if he reduces his total payments uniformly to all producers by not more than the amount of the reduction in payment from the producer-settlement fund.

(g) ADJUSTMENTS OF ERRORS IN PAYMENTS. Whenever verification by the market administrator of reports or payments of any handler discloses errors made in pay-

ments to the producer-settlement fund pursuant to paragraph (d) of this section, the market administrator shall promptly bill such handler for any unpaid amount and such handler shall, within 5 days, make payment to the market administrator of the amount so billed. Whenever verification discloses that payment is due from the market administrator to any handler, pursuant to paragraph (d) of this section, the market administrator shall, within 5 days, make such payment to such handler. Whenever verification by the market administrator of the payment by a handler to any producer, for milk purchased or received by such handler, discloses payment to such producer of less than is required by this section, the handler shall make up such payment to the producer not later than the time of making payment to producers next following such disclosure.

Sec. 941.9 *Expense of administration.* (a) PAYMENTS BY HANDLERS. As his prorata share of the expense of the administration hereof each handler, except those handlers exempt from the provisions hereof as set forth in Sec. 941.6 (a), shall pay to the market administrator, on or before the 18th day after the end of each delivery period, a sum not exceeding 2 cents per hundredweight with respect to all milk purchased or received by him during such delivery period from producers, from sources other than producers or other handlers, or produced by him, the exact sum to be determined by the market administrator, subject to review by the Secretary: Provided, That each handler, which is a cooperative association shall pay such prorata share of expense of administration only on that milk of producers actually received at a plant of such cooperative association, or caused to be delivered by such cooperative association to a plant from which no milk or cream is disposed of in the market area.

(b) SUITS BY MARKET ADMINISTRATOR. The market administrator may maintain a suit in his own name against any handler for the collection of such handler's prorata share of expense set forth in this section.

Sec. 941.10 *Marketing services.* (a) MARKETING SERVICE DEDUCTION. In making payments to producers pursuant to Sec. 941.8, each handler, with respect to all milk received from each producer during each delivery period, at a plant not operated by a cooperative association of

which such producer is a member, shall, except as set forth in paragraph (b) of this section, deduct 3 cents per hundredweight or such lesser amount as the market administrator shall determine to be sufficient, such determination to be subject to review by the Secretary, and shall, on or before the 18th day after the end of such delivery period, pay such deductions to the market administrator. Such moneys shall be expended by the market administrator for verification of weights, samples, and tests of milk received from such producers and in providing for market information to such producers. The market administrator may contract with an association or associations of producers for the furnishing of the whole or any part of such services to, or with respect to, the milk received from such producers.

(b) MARKETING SERVICE DEDUCTIONS WITH RESPECT TO MEMBERS OF A PRODUCERS' COOPERATIVE ASSOCIATION. In the case of producers whose milk is received at a plant not operated by a cooperative association of which such producers are members and for whom a cooperative association is actually performing the services set forth in paragraph (a) of this section, each handler shall, in lieu of the deductions specified in paragraph (a) of this section, make such deductions from payments made pursuant to Sec. 941.8 as may be authorized by such producers, and pay over on or before the 18th day after the end of each delivery period such deductions to the associations rendering such service of which such producers are members.

Sec. 941.11 *Market advisory committee.* (a) Subsequent to the effective date hereof, the market administrator may select a representative committee of the industry for purposes (1) of recommendation of amendments to this order, and (2) for conference, counsel, and advice.

Sec. 941.12. *Effective time, suspension, or termination of order.* (a) EFFECTIVE TIME. The provisions hereof, or any amendment hereto, shall become effective at such time as the Secretary may declare and shall continue in force until suspended, or terminated, pursuant to paragraph (b) of this section.

(b) SUSPENSION OR TERMINATION OF ORDER. The Secretary may suspend or terminate this order or any provision hereof whenever he finds that this order or any provision hereof obstructs or does not tend to effectuate the declared

policy of the act. This order shall, in any event, terminate whenever the provisions of the act authorizing it cease to be in effect.

(c) CONTINUING POWER AND DUTY OF THE MARKET ADMINISTRATOR. If upon the suspension or termination of any or all provisions hereof, there are any obligations arising hereunder, the final accrual or ascertainment of which requires further acts by any handler, by the market administrator, or by any other person, the power and duty to perform such further acts shall continue notwithstanding such suspension or termination: Provided, That any such acts required to be performed by the market administrator shall, if the Secretary so directs, be performed by such other person, persons, or agency as the Secretary may designate.

(1) The market administrator, or such other person as the Secretary may designate, shall (a) continue in such capacity until removed by the Secretary, (b) from time to time account for all receipts and disbursements, and when so directed by the Secretary deliver all funds on hand, together with the books and records of the market administrator or such person, to such person as the Secretary shall direct, and (c) if so directed by the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title to all funds, property, and claims vested in the market administrator or such person pursuant thereto.

(d) LIQUIDATION AFTER SUSPENSION OR TERMINATION. Upon the suspension or termination of any or all provisions hereof the market administrator, or such person as the Secretary may designate, shall, if so directed by the Secretary, liquidate the business of the market administrator's office and dispose of all funds and property then in his possession or under his control, together with claims for any funds which are unpaid or owing at the time of such suspension or termination. Any funds collected pursuant to the provisions hereof, over and above the amounts necessary to meet outstanding obligations and the expenses necessarily incurred by the market administrator or such person in liquidating and distributing such funds, shall be distributed to the contributing handlers and producers in an equitable manner.

Now, Therefore, Paul H. Appleby, Acting Secretary of Agriculture, acting under the provisions of Public Act

No. 10, 73d Congress, as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, for the purposes and within the limitations therein contained and not otherwise, hereby executes and issues in duplicate this order, as amended, under his hand and the official seal of the Department of Agriculture, in the city of Washington, District of Columbia, on this 27th day of June 1941, and declares this order, as amended, to be effective on and after the 1st day of July 1941.

Paul H. Appleby,
(Seal) *Acting Secretary of Agriculture.*

15 EXHIBIT "D."

O-41-1 Issued August 29, 1941

T. 7,[1]

UNITED STATES DEPARTMENT OF AGRICULTURE

SURPLUS MARKETING ADMINISTRATION

Ch. IX[1] Marketing Orders—Part 941[1]

AMENDMENT NO. 1 TO THE ORDER, AS AMENDED, REGULATING THE HANDLING OF MILK IN THE CHICAGO, ILLINOIS, MARKETING AREA[2]

CONTENTS

Sec. 941.0 Findings
941.5 Minimum prices

H. A. Wallace, Secretary of Agriculture of the United States of America, pursuant to the powers conferred upon the Secretary by Public Act No. 10, 73d Congress, as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937 (50 Stat. 246), issued, effective July 1, 1940, Order No. 41, as amended, regulating the handling of milk in the Chicago, Illinois,

[1] Code of Federal Regulations.

[2] Section 941.0 and Section 941.5 issued under the authority contained in 48 Stat. 31 (1933), 7 U. S. 601 et seq. (1934); 49 Stat. 750 (1935); 50 Stat. 246 (1937), 7 U. S. C. 601 et seq. (Supp. IV, 1938).

marketing area, which order, as amended, was further amended, effective July 1, 1941.

Paul H. Appleby, Acting Secretary of Agriculture, tentatively approved, on June 19, 1941, a marketing agreement, as amended, regulating the handling of milk in the Chicago, Illinois, marketing area.

There being reason to believe that amendments to said tentatively approved marketing agreement, as amended, and to said order, as amended, would tend to effectuate the declared policy of said act, notice was given, on the 30th day of July 1941, of a public hearing which was held at Chicago, Illinois, beginning on August 4, 1941, at which time and place all interested parties were afforded an opportunity to be heard on a proposal to amend the tentatively approved marketing agreement, as amended, and the order, as amended.

After such hearing, handlers of more than fifty percent of the volume of milk covered by said order, as amended, which is marketed within the Chicago, Illinois, marketing area, refused or failed to sign a tentatively approved marketing agreement, as amended, regulating the handling of milk in such marketing area, in the same manner as said order, as amended, by this amendment.

The requirements of section 8c (9) of said act have been complied with.

It is hereby found, upon the evidence introduced at the above-mentioned public hearing, said findings being in addition to the findings made upon the evidence introduced at the original hearing on said order and on said order, as amended, and being in addition to the other findings and determinations made prior to or at the time of the original issuance of said order (which findings are hereby ratified and affirmed, save only as such findings are in conflict with the findings hereinafter set forth):

Sec. 941.0 *Findings.*—1. That the prices calculated to give milk produced for sale in said marketing area a purchasing power equivalent to the purchasing power of such milk, as determined pursuant to sections 2 and 8e of said act, are not reasonable in view of the prices of feeds, the available supplies of feed, and other economic conditions which affect the market supply of and demand for such milk, and that the minimum prices set forth in this amendment to said order, as amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest;

2. That the order, as amended, and as hereby amended, regulates the handling of milk in the same manner as and is applicable only to handlers defined in a marketing agreement, as amended, upon which a hearing has been held; and

3. That the issuance of this amendment to the order, as amended, and all of its terms and conditions, as so amended, will tend to effectuate the declared policy of the act:

Pursuant to the powers conferred upon the Secretary by said act, it is hereby ordered that Order No. 41, as amended, regulating the handling of milk in the Chicago, Illinois, marketing area be and it is hereby amended as follows:

1. Delete Sec. 941.5 (a) (2) and substitute therefor the following:

(2) *Class I milk.*—The price per hundredweight for Class I milk during each delivery period, except the delivery periods of May and June, shall be the price determined pursuant to paragraph (b) of this section, plus 70 cents; and during the delivery periods of May and June the price per hundredweight for Class I milk shall be the price determined pursuant to paragraph (b), plus 50 cents: *Provided,* That with respect to Class I milk disposed of under a program approved by the Secretary for the sale or disposition of milk to low-income consumers, including persons on relief, the price shall be $2.20 per hundredweight.

2. Delete Sec. 941.5 (a) (3) and substitute therefor the following:

(3) *Class II milk.*—The price per hundredweight for Class II milk during each delivery period, except the delivery periods of May and June, shall be the price determined pursuant to paragraph (b) of this section, plus 32 cents; and during the delivery periods of May and June the price per hundredweight for Class II milk shall be the price determined pursuant to paragraph (b) of this section, plus 20 cents.

3. Delete Sec. 941.5 (a) (5) and substitute therefor the following:

(5) *Class IV milk.*—Multiply by 3.5 the average price per pound of 92-score butter at wholesale in the Chicago market, as reported by the United States Department of Agriculture for the delivery period during which such milk was received, and add 20 per cent: *Provided,* That such price shall be subject to the following adjustments:

(1) add 3½ cents per hundredweight for each full one-half cent that the price of dry skim milk for human consumption is above 5½ cents per pound, or (2) subtract 3½ cents per hundredweight for each full one-half cent that the price of such dry skim milk is below 5½ cents per pound. For purposes of determining this adjustment the price per pound of dry skim milk to be used shall be the average of the carlot prices for dry skim milk for human consumption, f. o. b. manufacturing plant, as published by the United States Department of Agriculture for a Chicago area during the delivery period, including in such average the quotations published for any fractional part of the previous delivery period which were not published and available for the price determination of such dry skim milk for the previous delivery period. In the event the United States Department of Agriculture does not publish carlot prices for dry skim milk for human consumption, f. o. b. manufacturing plant, the average of the carlot prices for dry skim milk for human consumption, delivered at Chicago, shall be used. In the latter event the Class IV price shall be subject to the following adjustments: (1) add 3½ cents per hundredweight for each full one-half cent that the price of dry skim milk for human consumption, delivered at Chicago, is above 7½ cents per pound, or (2) subtract 3½ cents per hundredweight for each full one-half cent that such price of dry skim milk is below 7½ cents per pound.

4. Delete Sec. 941.5 (b) and substitute therefor the following:

(b) *Basic formula price to be used in determining Class I and Class II prices.*—The basic formula price to be used in determining the Class I and Class II prices, set forth in this section, per hundredweight of milk shall be the price for Class III milk, determined pursuant to subparagraph (4) of paragraph (a) of this section, or that derived from the following formula, whichever is higher:

(1) Multiply the average wholesale price per pound of 92-score butter at Chicago for said delivery period as reported by the United States Department of Agriculture by six (6).

(2) Add 2.4 times the average weekly prevailing price per pound of "Twins" during said delivery period on the Wisconsin Cheese Exchange at Plymouth, Wisconsin: *Provided,* That if the price of "Twins" is not quoted on

the Wisconsin Cheese Exchange the weekly prevailing price of "Cheddars" shall be deemed to be the prevailing price for "Twins" and shall be used in determining the price pursuant to this paragraph.

(3) Divide by seven (7), the sum so determined being hereafter referred to in this paragraph as the "combined butter and cheese value."

(4) To the combined butter and cheese value add 30 percent thereof.

(5) Multiply the sum computed in subparagraph (4) above by 3.5.

5. Delete Sec. 941.5 (c) and substitute therefor the following:

(c) *Butterfat differential to handlers.*—If any handler has purchased or received milk from producers containing more or less than 3.5 percent butterfat, such handler shall add or deduct, per hundredweight of milk, for each one-tenth of 1 percent butterfat above or below 3.5 percent, an amount computed as follows: to the average price per pound of 92-score butter at wholesale in the Chicago market, as reported by the United States Department of Agriculture for the delivery period during which the milk was received, add 20 percent and divide the result obtained by 10.

Now, Therefore, the undersigned, pursuant to the powers conferred upon the Secretary by Public Act No. 10, 73d Congress, as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended, for the purposes and within the limitations therein contained and not otherwise, hereby executes and issues this amendment to the order, as amended, regulating the handling of milk in the Chicago, Illinois, marketing area, under his hand and the official seal of the Department of Agriculture, in the city of Washington, District of Columbia, on this 29th day of August, and declares this order, as amended, to be effective on and after the 6th day of September 1941.

(S) Claude R. Wickard,
Secretary of Agriculture.

Filed Nov. 13, 1942

16 And afterwards, on to wit, the 13th day of November, 1942, came the Defts. Joseph Ruzicka and Charles Ruzicka, by their attorneys and filed in the Clerk's office of said Court a certain Answer in words and figures following, to wit:

17 DISTRICT COURT OF THE UNITED STATES,
for the
Northern District of Illinois,
Eastern Division.

* * (Caption—Civil Action File No. 4670) * *

ANSWER OF DEFENDANTS JOSEPH RUZICKA AND CHARLES RUZICKA TO COMPLAINT.

Now come the defendants Joseph Ruzicka and Charles Ruzicka by William Parker Ward their attorney and agent in their behalf and for their answer to the complaint herein, state as follows:

I.

The defendants admit the allegations of Paragraph I of the complaint as to the enactment of the statutes pleaded, the same being matters of public record the defendants have no knowledge of, nor means of acquiring knowledge of, the direction of the Attorney General or the direction of the Secretary of Agriculture as alleged, and therefore deny the same and demand strict proof thereof.

II.

The defendants admit the allegations of Paragraph II of the complaint except as to the habitation of their co-defendant Frank Ruzicka which they neither admit nor deny but demand strict proof thereof as they have not sufficient knowledge of, nor means of acquiring knowledge of, his habitation.

III.

The defendants have no knowledge of the purpose of this action and further state in the affirmative that they
18 have not been guilty of any violation of the provisions of said Orders and Amendments.

IV.

The defendants admit the allegations of Paragraph IV of the complaint as to the issuance of said Orders and Amendments.

V.

The defendants admit being engaged in the handling of milk and milk products in the City of Chicago, County of Cook and State of Illinois, but have no knowledge of, nor means of acquiring knowledge of, the existence of competition of their business activities with those of other handlers subject to such order, and therefore deny the allegations with inference thereto. Defendants have no information concerning the interstate aspect of the movement of the milk products handled by the Seeley Dairy or of the effect of their activities in such handling as to directly burden, obstruct or affect interstate commerce in milk and its products; hence the defendants are unable to determine their status with reference to the definition set out in the alleged Section 8c (1) of the act, and section 941.1 (a) (4) of Order No. 41; and section 941.1 (a) (5) of Order No. 41, as subsequently amended, and for want of such knowledge neither affirm or deny the allegations with reference thereto.

VI.

The defendants admit the issuance of the orders and amendments alleged in Paragraph VI of the complaint; but defendants deny the application of the provisions alleged. Defendants deny that any errors with reference to reports to, or payments of monies to the producer-settlement fund theretofore filed at the office of the market administrator of Chicago, Illinois, were disclosed or existed in their accounts, books or records; defendants deny that any amount whatsoever of monies or funds were disclosed or ascertained to be due or outstanding in favor of the producer-settlement fund at the time of the alleged billing or at any time or for any period prior or subsequent thereto. Defendants deny any violation of Order No. 41 as originally issued or subsequently amended. Defendants state that they believe, according to their best information and
19 knowledge, that any billing by the market administrator of Chicago, Illinois representing an amount of monies due in favor of the producer-settlement fund, was based on an erroneous, improper, incomplete and inaccu-

rate inspection or audit of the defendants' accounts, books and records and upon findings gathered from and based upon erroneous, improper, incomplete and inaccurate tests of the defendants' milk and milk products. Defendants further state that they believe, according to their best information and knowledge, that certain quantities of milk and milk products were not properly or correctly allocated, distributed or divided by the market administrator or his representatives into the classes of milk and milk products set forth in the orders and amendments alleged.

VII.

Defendants, further answering said complaint, state:

(A) That the orders and amendments alleged herein are invalid and void; that said orders and amendments are unreasonable, capricious, vague, uncertain, contradictory and unjust, and allege that compliance with said orders and amendments is impossible in fact and economically unsound, and thereby defeat the declared purposes of the acts, and orders and amendments alleged;

(B) That, without waiving or limiting their right to contest the validity of said orders and amendments, they have attempted in good faith to fully comply with each and every act, order and amendment, and regulation applicable to the operations of their business, and more specifically, have in good faith attempted to fully comply with the specific acts, and orders and amendments, referred to in the complaint herein;

(C) That no cause of action or claim has been alleged upon which any relief can be granted.

Wherefore The Defendants Pray:

1. That the specific and general relief sought by the plaintiff be denied.

2. That this complaint be dismissed.

3. That these defendants have judgment for their costs most wrongfully sustained.

4. That these defendants be given all such other, further, and different relief as the Court may deem just and proper.

Joseph Ruzicka and
Charles Ruzicka

By William Parker Ward,
William Parker Ward
their attorney

State of Illinois }
County of Cook } ss.

William Parker Ward being duly sworn upon oath deposes and says that he is the attorney for the defendants Joseph Ruzicka and Charles Ruzicka; that he is their duly authorized agent in this behalf; that he makes this affidavit on behalf of the defendants in the foregoing answer; that he has read the foregoing answer and knows the contents thereof; that the same is true of his own knowledge, except as to matters therein stated on information and belief, and as to those matters he believes them to be true.

William Parker Ward

Subscribed and sworn to before me, a notary public, in and for the State of Illinois, County of Cook, this 12th day of November, 1942.

Murray Rosenstein
(Seal) Notary Public.

21 And afterwards on, to wit, the 10th day of April, 1944, came the Plaintiff by United States attorney and filed in the Clerk's office of said Court a certain Supplemental Complaint in words and figures following, to wit: Filed April 10, 1944

22 IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois
Eastern Division
(Caption—Civil Action No. 4670)

SUPPLEMENTAL COMPLAINT.

Comes now the United States of America, by J. Albert Woll, United States Attorney, in and for the Northern District of Illinois, and brings this supplemental complaint, and alleges:

VII.

The defendant Frank Ruzicka having entered the Armed Forces of the United States on April 1, 1942 and this court having, in an order dated June 25, 1943, ordered the cause based upon the original complaint, withdrawn from the trial call of this court until such time as the defendant Frank Ruzicka is released from the military service of the United States, this supplemental complaint is brought for

the purpose of enforcing with respect to the defendants Joseph Ruzicka and Charles Ruzicka, and for the period from April 1, 1942 to the date of entry of judgment herein, the provisions of Order No. 41, as amended, effective July 1, 1941 and as further amended by Amendment No. 1, effective September 6, 1941, and by Amendment No. 2, effective February 1, 1943, said amendments having been issued by or on behalf of the Secretary of Agriculture of the United States (hereinafter referred to as the Secretary), as amended by an order issued by the Secretary effective
23 May 1, 1943 suspending certain provisions of Order No. 41, as amended, and by an amendment to various orders including Order No. 41, as amended, effective June 21, 1943 issued by the War Food Administrator, regulating such handling of milk in the Chicago, Illinois, marketing area, as is in the current of interstate commerce, or as directly burdens, obstructs, or affects interstate commerce in milk or its products, and to prevent and restrain the defendant from handling milk or its products in violation of said Order No. 41, as amended, effective July 1, 1941 and as further amended by Amendment No. 1, effective September 6, 1941, by Amendment No. 2, effective February 1, 1943, by said suspension order effective May 1, 1943, and by an amendment to various orders including Order No. 41, effective June 21, 1943.

VIII.

Reaffirming all of the allegations of paragraph IV of the original complaint the plaintiff further alleges that Amendment No. 2, effective February 1, 1943, to Order No. 41, as amended, effective July 1, 1941, was issued on behalf of the Secretary by the Acting Secretary of Agriculture on January 23, 1943 and was published in the Federal Register on January 29, 1943 (8 F. R. 1258). A true and complete copy of said Amendment No. 2 is attached hereto, marked exhibit "E" and made a part hereof. An order suspending certain provisions of Order No. 41, as amended, was issued April 23, 1943, published in the Federal Register on April 26, 1943 (8 F. R. 5358) and became effective May 1, 1943. A true and correct copy of the Suspension Order is attached hereto, marked exhibit "F" and made a part hereof. An amendment to various orders including Order No. 41, as amended, effective July 1, 1941, was issued effective June 21, 1943, by the War Food Administrator on June 12, 1943 and was published in the Federal Register

on June 18, 1943 (8 F. R. 8294). A true and compiete copy of said amendment is attached hereto, marked exhibit "G" and made a part hereof. All of the allegations of paragraph V of the original complaint are reaffirmed and made a part hereof.

24 IX.

Pursuant to Section 941.3(a) of the order, as amended, the defendants have filed reports, from which the Market Administrator has made computations required to be made pursuant to Section 941.4 and Section 941.5 of the order, as amended, and, pursuant to Section 941.8 of the order, as amended, has rendered the defendants monthly, a transcript of their account with the producer-settlement fund. In violation of the act and of the provisions of Section 941.8(e) of the Order, as amended, the defendants have failed and refused and still fail and refuse with respect to any delivery period, from April 1, 1942 to and including the delivery period ending February 29, 1944 to make full payment to the Market Administrator, of the amounts shown to be due from the defendants in the accounts so rendered by the Market Administrator. Payment thereof was due on or before the 16th day after the end of each delivery period. As of March 16, 1944 the defendants are indebted to the Market Administrator for the account of the producer-settlement fund, on the basis of its filed reports, in the sum of $961.27, which in violation of the Act and the provisions of the Order, as amended, the defendants have refused to pay.

X.

Section 941.8(g) of Order No. 41, as amended, provides that whenever verification by the Market Administrator of reports or payments of any handler discloses errors made in payments to the producer-settlement fund, the Market Administrator shall promptly bill such handler for any unpaid amount, and such handler shall within five days, make payment to the Market Administrator of the amount so billed. Such errors in payments made by the defendants to the producer-settlement fund for the delivery periods commencing April 1, 1942 and ending August 31, 1943, have been disclosed by an audit of the defendants'
25 books and records, by the authorized representative of the Market Administrator, and the Market Administrator, on December 23, 1943, billed the defendants for

the amount necessary to adjust the defendants' account with the producer-settlement fund. The defendants, in violation of the Act and of Order No. 41, as amended, have failed and refused and still fail and refuse to make payment of the amounts so billed, and are therefore indebted to the Market Administrator for adjustment of errors disclosed in defendants' account with the producer-settlement fund, in the sum of $2,119.17 for the periods commencing April 1, 1942 and ending August 31, 1943.

XI.

Section 941.9 of Order No. 41, as amended, requires each handler to pay to the Market Administrator on or before the 18th day after the end of each delivery period, as his pro-rata share of the expense of the administration of Order No. 41, as amended, a sum not exceeding two cents per hundredweight, with respect to all milk purchased or received by him during each delivery period from producers, from sources other than producers, or from other handlers, or produced by him, the exact sum to be determined by the Market Administrator, subject to review by the Secretary. The Market Administrator determined that beginning with January 1, 1942 the exact sum should be one and one-half cents per hundredweight. The defendants have violated the Act and the Order, as amended, in that they have failed and refused, and still fai' and refuse, to pay such moneys to the Market Administrator for various delivery periods between August 1, 1943 and February 29, 1944 and as the result of said failure and refusal are indebted to the Market Administrator for their pro-rata share of the expense of administration of Order No. 41, as amended, in the sum of $100.17 as of March 18, 1944.

26 XII.

Section 941.10 of Order No. 41, as amended, requires each handler in making payments to producers, with respect to all milk received from each producer during each delivery period, at a plant not operated by a cooperative association of which such producer is a member, to deduct three cents per hundredweight, or such lesser amount as the Market Administrator shall determine to be sufficient, such determination to be subject to review by the Secretary; and requires each handler to pay such deductions to the Market Administrator for marketing services, on or

before the 18th day after the end of each delivery period. The Market Administrator determined that commencing January 1, 1942 the exact sum to be deducted and remitted for such services should be two cents per hundredweight.

The defendants have violated the Act and the Order, as amended, in that they have failed and refused, and still fail and refuse, to pay such deductions to the Market Administrator for various delivery periods between August 1, 1943 and February 29, 1944 and as a result of such failure and refusal are indebted to the Market Administrator in the sum of $172.22 as of March 18, 1944.

Wherefore Plaintiff Demands:

4. That the court issue a mandatory injunction commanding the defendants Joseph Ruzicka and Charles Ruzicka, co-partners doing business as Seeley Dairy, to comply fully with all of the provisions of Order No. 41, as amended, order regulating the handling of milk in the Chicago, Illinois, marketing area, and particularly to make all payments due and owing the Market Administrator for the periods beginning April 1, 1942 to the date of entry of judgment herein.

5. That the court issue a permanent injunction enjoining and restraining the defendants, and each of them, 27 their agents, attorneys, employees and assigns, and all persons acting in concert with them, or under them, or in their behalf, or claiming to so act, from violating any of the provisions of Order No. 41, as amended, regulating the handling of milk in the Chicago, Illinois, marketing area.

6. That the plaintiff be given all such other, further, and different relief as the court may deem just and proper.

United States of America
By *J. Albert Woll*
J. Albert Woll
United States Attorney
Chicago, Illinois

S. E. Paul
S. E. Paul
Regional Attorney
U. S. Department of Agriculture
Chicago, Illinois

John J. Toohey
John J. Toohey, Attorney
U. S. Department of Agriculture
Chicago, Illinois

28 AFFIDAVIT.

State of Illinois
County of Cook } ss.
City of Chicago

Herbert H. Erdmann, being first duly sworn, deposes and says that he is Acting Market Administrator designated by the War Food Administrator to administer the provisions of Order No. 41 as originally issued and as subsequently amended, Order regulating the handling of milk in the Chicago, Illinois, marketing area; that he makes this affidavit on behalf of the plaintiff in the foregoing supplementary complaint; that he has read the foregoing supplementary complaint and knows the contents thereof, and that the same is true of his own knowledge, except as to matters therein stated on information and belief, and as to those matters he believes them to be true.

H. H. Erdmann

Subscribed and sworn to before me, a Notary Public, in and for the County of Cook, State of Illinois, this 20th day of March, 1944.

s/ J. H. Kramer
(Seal) Notary Public, Cook County, Ill.
My commission expires 7/6/46

29 EXHIBIT "E".

Order No. 41, as Amended, Amendment No. 2 — Effective February 1, 1943

UNITED STATES DEPARTMENT OF AGRICULTURE
FOOD DISTRIBUTION ADMINISTRATION

T. 7, Ch. IX, Code of Fed. Regs.
Marketing Orders—Part 941

ORDER AMENDING THE ORDER, AS AMENDED, REGULATING THE HANDLING OF MILK IN THE CHICAGO, ILLINOIS, MARKETING AREA.

Section
941.0 Findings and determinations
941.00 Order relative to handling
941.1 Definitions
941.4 Classification of milk
941.5 Minimum prices
941.8 Payment for milk
941.13 Agents

Authority: Amendments to §§ 941.0, 941.00, 941.1, 941.4, 941.5, 941.8, 941.13, issued under 48 Stat. 31, 670, 675; 49 Stat. 750; 50 Stat. 246; 7 U.S.C. 1940 ed. 601 et seq.

It is provided in Public Act No. 10, 73d Congress (May 12, 1933), as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (hereinafter referred to as the "act"), that the Secretary of Agriculture of the United States (hereinafter referred to as the "Secretary") shall, subject to the provisions of the act, issue orders regulating such handling of certain agricultural commodities (including milk and its products) as is in the current of interstate or foreign commerce, or which directly burdens, obstructs, or affects interstate or foreign commerce in such commodities.

§ 941.0 Findings and Determinations. (a) Findings upon the basis of hearing record. Pursuant to the act and

the rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR. 900. 1-900.17; 6 F.R. 6570, 7 F.R. 3350), a public hearing was held upon certain proposed amendments to the tentatively approved marketing agreement, as amended, and to the order, as amended, regulating the handling of milk in the Chicago, Illinois, marketing area. Upon the basis of the evidence introduced at such hearing and the record thereof, it is hereby found that:

(1) The aforesaid order, as amended and as hereby amended, and all of the terms and conditions of said order, as amended and as hereby amended, will tend to effectuate the declared policy of the act;

(2) The prices calculated to give milk produced for sale in the Chicago, Illinois, marketing area a purchasing power equivalent to the purchasing power of such milk, as determined pursuant to §§ 2 and 8(e) of the act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supplies of and demand for such milk, and the minimum prices set forth in the aforesaid order, as amended and as hereby further amended, are such prices as will reffect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The aforesaid order, as amended and as hereby further amended, regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial and commercial activity specified in, the aforesaid tentatively approved marketing agreement, as amended, upon which a hearing has been held.

The foregoing findings are supplementary and in addition to the findings made in connection with the issuance of the aforesaid order, and the findings made in connection with the issuance of each of the previously issued amendments thereto; and all of said previous findings are hereby ratified and affirmed except insofar as such findings may be in conflict with the findings herein set forth.

(b) Determinations. It is hereby determined that handlers (excluding cooperative associations of producers who are not engaged in processing, distributing, or shipping milk covered by the aforesaid order, as amended and as hereby further amended) of at least 50 percent of the volume of milk covered by said order, as amended and as hereby further amended, which is marketed within the

Chicago, Illinois, marketing area, refused or failed to sign the tentatively approved marketing agreement, as amended, regulating the handling of milk in the Chicago, Ill., marketing area; and it is further determined that:

(1) The refusal or failure of such handlers to sign said tentatively approved marketing agreement, as amended, tends to prevent the effectuation of the declared policy of the act;

(2) The issuance of this order further amending the order, as amended, is the only practical means, pursuant to the declared policy of the act, of advancing the interests of producers of milk which is produced for sale in the Chicago, Illinois, marketing area; and

(3) The issuance of this order, further amending the aforesaid order, as amended, is approved or favored by at least two-thirds of the producers who participated in a referendum on the question of the approval of this order and who, during the determined representative period, were engaged in the production of milk for sale in said Chicago, Illinois, marketing area.

§ 941.00 Order relative to handling. It is, therefore, ordered that, from and after the effective date hereof, the handling of milk in the Chicago, Illinois, marketing area shall be in conformity to and in compliance with the terms and conditions of the aforesaid order, as amended and as hereby further amended; and the aforesaid order, as amended, is hereby further amended in the following respects:

(a) Delete § 941.1(a) (11) and substitute therefor the following:

(11) The term "Secretary" means the Secretary of Agriculture of the United States or any officer or employee of the United States Department of Agriculture who is, or who may hereafter be, authorized to exercise the powers and to perform the duties of the Secretary of Agriculture of the United States.

(b) Delete § 941.4(b) (3) and substitute therefor the following:

(3) Class III milk shall be all milk the butterfat from which is used to produce a milk product other than one of those specified in Class II and Class IV, and all bulk milk and bulk cream disposed of to bakeries, soup companies, and candy manufacturing establishments.

(c) Delete § 941.5(a) (4) and substitute therefor the following:

(4) Class III Milk—The price per hundredweight for milk containing 3.5 percent butterfat during each delivery period shall be the average, computed by the market administrator, of prices, as reported by the United States Department of Agriculture, paid during such delivery period to farmers at each of the manufacturing plants or places listed in this subparagraph for which prices are reported, but in no event shall such price be less than the price computed pursuant to subparagraph (5) of this paragraph.

Location of Manufacturing Plants and Places.

Mt. Pleasant, Michigan	Berlin, Wisconsin
Sparta, Michigan	Richland Center, Wisconsin
Hudson, Michigan	Oconomowoc, Wisconsin
Wayland, Michigan	Jefferson, Wisconsin
Coopersville, Michigan	New Glarus, Wisconsin
Greenville, Wisconsin	Belleville, Wisconsin
Black Creek, Wisconsin	New London, Wisconsin
Orfordville, Wisconsin	Manitowoc, Wisconsin
Chilton, Wisconsin	West Bend, Wisconsin

(d) Delete § 941.5(b) and substitute therefor the following:

(b) Basic formula price to be used in determining Class I and Class II prices. The basic formula price to be used in determining the prices per hundredweight of Class I and Class II milk, set forth in this section, shall be the price for Class III milk determined pursuant to paragraph (a) (4) of this section, the price for Class IV milk determined pursuant to paragraph (a) (5) of this section, or that derived from the following formula, whichever is the highest:

(1) Multiply the average wholesale price per pound of 92-score butter at Chicago for the delivery period as reported by the United States Department of Agriculture, by six (6);

(2) Add 2.4 times the average weekly prevailing price per pound of "Twins" during the delivery period on the Wisconsin Cheese Exchange at Plymouth, Wisconsin: Provided, That if the price of "Twins" is not quoted on the Wisconsin Cheese Exchange the weekly prevailing price of "Cheddars" shall be deemed to be the prevailing price for "Twins" and shall be used in determining the price pursuant to this formula;

(3) Divide by seven (7), the sum so determined being hereafter referred to in this paragraph as the "combined butter and cheese value";

(4) To the combined butter and cheese value add 30 percent thereof; and

(5) Multiply the sum computed in subparagraph (4) of this paragraph by 3.5.

(e) Delete § 941.8(c) and substitute therefor the following:

(c) Butterfat differential to producers. For each one-tenth of 1 percent above or below 3.5 percent in average butterfat content of milk delivered by any producer during any delivery period, the uniform price paid to such producer shall be plus or minus, as the case may be, an amount computed as follows: to the average price per pound of 92-score butter at wholesale in the Chicago market, as reported by the United States Department of Agriculture for the delivery period during which the milk was received, add 20 percent and divide the result obtained by 10.

(f) Add as § 941.13 the following:

§ 941.13 Agents. The Secretary may, by designation in writing, name any officer or employee of the United States, or name any bureau or division of the United States Department of Agriculture, to act as his agent or representative in connection with any of the provisions hereof.

Issued at Washington, D. C., this 23rd day of January 1943, to be effective on and after the 1st day of February 1943. Witness my hand and the official seal of the Department of Agriculture.

/s/ Paul H. Appleby
Acting Secretary of Agriculture

Approved: Jan. 27, 1943

/s/ James F. Byrnes
Director of Economic Stabilization

30 EXHIBIT "F".

TITLE 7—AGRICULTURE

CHAPTER IX—FOOD DISTRIBUTION ADMINISTRATION

PART 941—MILK IN THE CHICAGO, ILLINOIS, MARKETING AREA

ORDER SUSPENDING CERTAIN PROVISIONS OF THE ORDER, AS AMENDED, REGULATING THE HANDLING OF MILK IN THE CHICAGO, ILLINOIS, MARKETING AREA.

Pursuant to the applicable provisions of Public Act No. 10, 73d Congress, as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937 (7 U. S. C. 1940 ed. 601 et seq.), hereinafter referred to as the "act," and of the order, as amended, regulating the handling of milk in the Chicago, Illinois, marketing area, it is hereby determined that the provision of such order which provides seasonal minimum prices for Class I milk during the months of May and June 1943, is a provision which obstructs and does not tend to effectuate the declared policy of the act with respect to producers of milk under such order.

It Is, Therefore, Ordered that, effective as of 12:01 a.m., c.w.t., May 1, 1943, the following provisions of section 941.5(a) (2) of the order, as amended, regulating the handling of milk in the Chicago, Illinois, marketing area, are hereby suspended:

"except the delivery periods of May and June," and

"and during the delivery periods of May and June the price per hundredweight for Class I milk shall be the price determined pursuant to paragraph (b), plus 50 cents."

Done at Washington, D. C., this 23rd day of April 1943.

Witness my hand and seal of the Department of Agriculture.

/s/ Claude R. Wickard

Secretary of Agriculture

31 EXHIBIT "G".

Amendment to Various Orders Effective June 21, 1943

WAR FOOD ADMINISTRATION

FOOD DISTRIBUTION ADMINISTRATION

T. 7, Ch. IX, Code of Fed. Regs. Marketing Orders

ORDER AMENDING THE ORDERS, AS AMENDED, REGULATING THE HANDLING OF MILK IN VARIOUS MARKETING AREAS.

Findings and determinations. (a) *Findings upon the basis of the hearing record.* Pursuant to Public Act No. 10, 73d Congress (May 12, 1933), as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (hereinafter referred to as the "act"), and the rules of practice and procedure covering the formulation of marketing agreements and milk orders (7 CFR, 1941 Supp. 900.1-900.17; 7 F.R. 3350; 8 F.R. 2815) a public hearing was held upon a certain proposed amendment to each of the tentatively approved marketing agreements, as amended, and to each of the orders, as amended, regulating the handling of milk in the marketing areas hereinafter specified. Upon the basis of the evidence introduced in such hearing and the record thereof, it is hereby found that:

(1) The orders hereafter specified regulating the handling of milk in the respective areas covered thereby, as amended and as hereby amended, and all of the terms and conditions of said orders, as amended and as hereby amended, will tend to effectuate the declared policy of the act:

(2) The prices calculated to give milk produced for sale in each of said marketing areas a purchasing power equivalent to the purchasing power of such milk as determined

pursuant to sections 2 and 8 (e) of the act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supplies of and demand for such milk, and the minimum prices specified in each of the aforesaid orders, as amended and as hereby further amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) Each of the aforesaid orders, as amended and as hereby further amended, regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial and commercial activities specified in the aforesaid tentatively approved marketing agreements, as amended, upon which a hearing has been held.

The foregoing findings are supplementary and in addition to the findings made in connection with the issuance of the aforesaid orders, respectively, and the findings made in connection with the issuance of each of the previously issued amendments thereto; and all said previous findings are hereby ratified and affirmed except insofar as such findings may be in conflict with the findings herein set forth.

32 (b) *Determinations.* It is hereby determined that handlers (excluding cooperative associations of producers who are not engaged in processing, distributing, or shipping milk covered by the aforesaid orders, as amended and as hereby further amended) of at least fifty percent of the volume of milk covered by said orders, respectively, as amended and as hereby further amended, which is marketed within the respective marketing areas, refused or failed to sign the tentatively approved marketing agreement, as amended, regulating the handling of milk in their respective marketing areas; and it is hereby further determined that:

(1) The refusal or failure of such handlers to sign such tentatively approved marketing agreements, as amended, tends to prevent the effectuation of the declared policy of the act;

(2) The issuance of this order further amending the said orders, as amended, is the only practical means, pursuant to the declared policy of the act, of advancing the interests of producers of milk which is produced for sale in the respective marketing areas; and

(3) The issuance of this order further amending the aforesaid orders, as amended, is approved or favored by at least two-thirds of the producers who, during the month of April 1943 (which month is hereby determined to be a representative period), were engaged in the production of milk for sale in their respective marketing areas.

Order Relative to Handling

It is hereby ordered, that such handling of milk in each of the marketing areas hereinafter specified as is in the current of interstate commerce or as directly burdens, obstructs, or affects interstate commerce shall, from the effective date hereof, be in compliance with the terms and conditions of the orders regulating the handling of milk in the respective areas, as amended and as hereby further amended; and the orders hereafter specified are hereby respectively further amended by adding to each of the said orders, as hereinafter specified, the following section:

Emergency price provision. Whenever the provisions hereof require the market administrator to use a specific price (or prices) for milk or any milk product for the purpose of determining class prices or for any other purpose, the market administrator shall add to the specified price the amount of any subsidy, or other similar payment, being made by any Federal agency in connection with the milk, or product, associated with the price specified: *Provided*, That if for any reason the price specified is not reported or published as indicated, the market administrator shall use the applicable maximum uniform price established by regulations of any Federal agency plus the amount of any such subsidy or other similar payment. *Provided further*, That if the specified price is not reported or published and there is no applicable maximum uniform price, or if the specified price is not reported or published and the Secretary determines that the market price is below the applicable maximum uniform price, the market administrator shall use a price determined by the Secretary to be equivalent to or comparable with the price specified.

33 Said section is hereby incorporated in the following orders:

Part 941—Milk in the Chicago, Illinois, marketing area as § 941.14

Part 965—Milk in the Cincinnati, Ohio, marketing area as § 965.15

Part 954—Milk in the Duluth-Superior marketing area as § 954.13
Part 932—Milk in the Fort Wayne, Indiana, marketing area as § 932.11
Part 920—Milk in the La Porte County, Indiana, marketing area as § 920.11
Part 946—Milk in the Louisville, Kentucky, marketing area as § 946.12
Part 942—Milk in the New Orleans, Louisiana, marketing area as § 942.13
Part 944—Milk in the Quad Cities (Illinois-Iowa) marketing area as § 944.12
Part 903—Milk in the St. Louis, Missouri, marketing area as § 903.14
Part 930—Milk in the Toledo, Ohio, marketing area as § 930.12
Part 904—Milk in the Greater Boston, Massachusetts, marketing area as § 904.12
Part 912—Milk in the Dubuque, Iowa, marketing area as § 912.15
Part 947—Milk in the Fall River, Massachusetts, marketing area as § 947.13
Part 913—Milk in the Greater Kansas City marketing area as § 913.16
Part 934—Milk in the Lowell-Lawrence, Massachusetts, marketing area as § 934.12
Part 935—Milk in the Omaha-Council Bluffs marketing area as § 935.15
Part 961—Milk in the Philadelphia, Pennsylvania, marketing area as § 961.10
Part 948—Milk in the Sioux City, Iowa, marketing area as § 948.14
Part 945—Milk in the Washington, D. C., marketing area as § 945.15

(48 Stat. 31, 670, 675; 49 Stat. 750; 50 Stat. 246; 7 U.S.C. 1940 ed. 601 et seq.; E. O. 9334, 8 F. R. 5423)

Issued at Washington, D. C., this 12th day of June, 1943.
To be effective on and after the 21st day of June 1943.

/S/ Chester C. Davis
War Food Adminstrator

Approved: June 17, 1943

/S/ Fred M. Vinson
Director of Economic Stabilization

34 And afterwards on, to wit, the 8th day of May, 1944, came the Defts. Joseph Ruzicka and Charles Ruzicka by their attorneys and filed in the Clerk's office of said Court a certain Answer in words and figures following, to wit: Filed May 8, 1944

35 IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois
Eastern Division

* * (Caption—Civil Action No. 4670) * *

ANSWER OF JOSEPH RUZICKA AND CHARLES RUZICKA TO SUPPLEMENTAL COMPLAINT.

Now come the defendants, Joseph Ruzicka, and Charles Ruzicka, by William Parker Ward, their attorney and agent in their behalf and for their answer to the supplemental complaint herein state as follows:

VII.

Defendants admit that Frank Ruzicka entered the service of the Armed Forces of the United States on April 1, 1942; defendants admit that this court ordered the cause based on the original complaint withdrawn from the trial call until such time as the defendant, Frank Ruzicka, is released from the Military Service of the United States but defendants state in the alternative that said order of the court provided that all transactions prior to the date of said
36 order to wit: June 25, 1943, were to be held in abeyance until the return of the said Frank Ruzicka; defendants further state in the alternative that all matters in controversy for acts and transactions prior to the said date were not to be litigated or determined by this court until the return of the said Frank Ruzicka; defendants have no knowledge of the purpose for which the said supplemental complaint has been filed but demand strict proof of all allegations of the plaintiff.

VIII.

These defendants admit the issuance of certain purported orders and amendments to orders and suspensions of orders of the Secretary of Agriculture and of the person

entitled War Food Administrator purporting to regulate the handling of milk and milk products in the Chicago, Illinois, marketing area as is in the current of interstate commerce or as directly burdens, obstructs or affects interstate commerce; defendants allege that the orders, amendments and suspensions referred to herein are invalid and void; that said orders, amendments and suspensions are unreasonable, capricious, vague, uncertain, contradictory and unjust and allege in the alternative that if said orders, amendments and suspensions are determined by this Honorable Court either in this proceeding or by a similar court of competent jurisdiction in a proceedings to review a finding or determination under the administrative proceedings provided for in the said act and amendments to be applicable to the business operations of these defendants that the application of said orders, amendments and suspensions would irreparably harm and injure these defendants: defendants further state that the operations under said orders are impossible in fact and economically unsound and thereby defeat the declared purposes of the acts and or-
37 ders referred to; these defendants admit that the two of them; namely, Joseph Ruzicka and Charles Ruzicka, are presently engaged in a dairy business involving the processing and distribution of milk and milk products in the City of Chicago, County of Cook and State of Illinois but allege that said operations involve the use of the capital investment and assets of the partnership composed of the three following persons in equal shares: Joseph Ruzicka, Frank Ruzicka and Charles Ruzicka; that said three partners investment and business is conducted under the name "Seeley Dairy"; defendants further state that they had no knowledge or no means of acquiring knowledge of the existence of competition of their business activities with those of other milk dealers whether said other dealers come within the definition "handlers" as provided in said orders, etc. and, therefore, deny the allegations; defendants have no information nor means of acquiring information concerning the interstate aspect of the movement of the milk or milk products handled by them or the effect of their business activities as to directly burden, obstruct or affect interstate commerce in milk and its products and for want of such knowledge and information neither affirm nor deny the allegations with reference thereto but demand strict proof of the plaintiff thereof.

IX.

These defendants admit the issuance of said orders and orders as amended as alleged but deny the applicability of the provisions referred to to these two defendants or to their business activities; defendants state in the alter-
38 native that they believe according to their best information that any billing by the market administrator located at Chicago, Illinois, if properly made and applicable to these two defendants was based upon an erroneous, improper, incomplete and inaccurate inspection or audit of the defendants' accounts, books, records and activities of their transactions and upon findings gathered from and based upon erroneous, improper, incomplete and inaccurate tests of the defendants milk and milk products.

X.

These defendants admit the issuance of said orders and orders as amended as alleged but deny the applicability of the provisions referred to to these two defendants or to their business activities; defendants state in the alternative that they believe according to their best information and knowledge that any billing by the market administrator located at Chicago, Illinois, if properly made and applicable to these two defendants was based upon an erroneous, improper, incomplete and inaccurate inspection or audit of the defendants' accounts, books, records and activities of their transactions.

XI.

These defendants admit the issuance of said orders and orders as amended as alleged but deny the applicability of the provisions referred to to these two defendants or to their business activities; defendants state in the alternative that they believe according to their best information and knowledge that any billing by the market administrator located at Chicago, Illinois, if properly made and applicable to these two defendants was based upon
39 an erroneous, improper, incomplete and inaccurate inspection or audit of the defendants' accounts, books, records and activities of their transactions; defendants state in the alternative that the operation of the said order purporting to equitably regulate the handling of milk in the Chicago, Illinois, milk shed is a part of a program of the Federal Government through the activities of various

agencies, to-wit: the Office of the Secretary of Agriculture, the War Food Administration, the Food Distribution Administration, the Office of Price Administration, the Office of Economic Stabilization and the Office of War Mobilization; that said program is governmental in nature and the costs and expenses of such program should be borne by the Federal Government through general taxation and that said costs and expenses should not be borne by this or any other milk dealer whether within the definition "handler" as used in said orders and amendments, and is not a proper method of taxation against these persons; that since the said defendants have had no voice nor opportunity to be heard in the administration of the said program through any of the said Federal agencies involved this attempt at collection of the costs and expenses of the administration of said program amounts to taxation without representation and is tantamount to the taking of property without due process of law in violation of the Federal Constitution.

XII.

These defendants admit the issuance of said orders and orders as amended as alleged but deny the applicability of the provisions referred to to these two defendants or to their business activities; defendants state in the alternative that they believe according to their best information and knowledge that any billing by the market administrator located at Chicago, Illinois, if properly made and applicable to these two defendants was based upon an erroneous, improper, incomplete and inaccurate inspection or audit of the defendants' accounts, books, records and activities of their transactions.

XIII.

These defendants further answering the said supplemental complaint state:

A. These defendants admit that several orders purporting to equitably and fairly regulate and supervise the business activities of the milk and milk products industries in the City of Chicago, County of Cook and State of Illinois, have been published as orders of the Secretary of Agriculture; defendants deny the validity of the issuance of the said orders and amendments, said orders and amended orders being promulgated upon insufficient inaccurate facts as to the economic status of agriculture, the credit of farm

income and the movement of milk and milk products in interstate commerce.

B. Defendants state that the economic foundation for the existence of the orders referred to herein has been altered since the issuance of said order and order as amended; that the declaration of the Secretary of Agriculture that said economic foundation for the existence of said order and order as amended referred to herein has been a mere recitation by the Secretary of Agriculture and has not been based upon a complete and thorough investigation of the actual facts which would reveal said economic conditions; that the declared policy of Congress as set forth in the act has not and is not being achieved by the continued
41 existence of the said order and order as amended in this area; that the defendants verily believe that there is no longer any basis in fact or in law for the continued existence of this order and order as amended; that these defendants verily believe that on the contrary the continued existence of the order and order as amended obstructs, burdens and affects intrastate and interstate commerce in this area and tends to destroy the national credit structure.

C. Defendants state that they verily believe that the operation in the City of Chicago, County of Cook and State of Illinois of the said order and order as amended is in direct conflict with the declared policy of the President of the United States said policy being commonly referred to as the "Hold the Line" policy and is in direct conflict with the orders and anti-inflation directives of James F. Byrnes as director of War Mobilization of the Federal Government; that the continued existence and attempted operation of the said order and order as amended is in direct conflict with and in violation of the declared economic policy of the Office of Price Administration of the Federal Government; that there has been a failure of cooperation between the various agencies of the Federal Government entrusted with the responsibility of carrying out the various aspects of the milk and milk products industries program of the Federal Government as administered by the Office of the Federal Milk Market Administrator in Chicago, the Office of War Food Administration, the Office of Economic Stabilization, the Office of War Mobilization and the Office of Price Administration all of the Federal Government to the prejudice of the milk and milk products

industries throughout the nation and specifically in the City of Chicago, County of Cook and State of Illinois;
42 that the plaintiff herein by reason of the failure of the cooperation and failure of economic foundation and by reason of the violation by the plaintiff of the declared economic policies of the President of the United States and said Federal offices said failure of cooperation and of economic foundation and violations having existed continuously since the creation of said offices of the said Government ought not to have any relief whatsoever from these defendants at the present time for transactions occurring since and during said violations by the plaintiff.

D. Defendants state that the Agricultural Adjustment Act of 1933 as reenacted and amended by the Agricultural Marketing Agreement Act of 1937 provides for an administrative hearing as to the determination by the Secretary of Agriculture of the matters and problems concerning the applicability of the said order and order as amended; that there has been no determination by the Secretary of Agriculture under the applicable provisions of the said acts as to the applicability and operation of the said order and order as amended as to these defendants.

Wherefore, the defendants, Joseph Ruzicka and Charles Ruzicka pray as follows:

A. That the Specific and general relief sought by the plaintiff be denied.

B. That this complaint be dismissed.

C. That these defendants have judgment for their costs most wrongfully sustained.

D. That the Secretary of Agriculture and all those
43 acting in concert with him or under his direction and supervision be permanently restrained and enjoined from the attempted application of the said order and order as amended as to each of these defendants.

E. That the court dismiss this complaint and this supplemental complaint for lack of equity.

F. That the plaintiff establish and show the basis in law and in fact of the application of the said acts and orders to these defendants.

G. That the plaintiff establish and show the basis in law and in fact for the reenactment and issuance of the said order and order as amended.

H. That the plaintiff establish and show the basis in law and in fact of the continued existence of the said order and order as amended.

I. For such other and further relief as the court deems meet.

Joseph Ruzicka and
Charles Ruzicka
By *William Parker Ward*,
William Parker Ward,
their attorney.

44 State of Illinois } ss:
County of Cook }

William Parker Ward being duly sworn upon oath deposes and says that he is the attorney for the defendants, Joseph Ruzicka and Charles Ruzicka; that he is their duly authorized agent in this behalf; that he makes this affidavit on behalf of the defendants in the foregoing answer; that he has read the foregoing answer and knows the contents thereof; that the same is true of his own knowledge, except as to matters therein stated on information and belief, and as to those matters he believes them to be true.

William Parker Ward.

Subscribed and sworn to before me, a notary public, in and for the State of Illinois, County of Cook, this 8th day of May, 1944.

Mary Costello, *Notary Public.*
(Seal)

45 And afterwards on, to wit, the 28th day of June, 1944 came the Defts. Joseph Ruzicka, *et al.* by their attorney and filed in the Clerk's office of said Court a certain Petition in words and figures following, to wit: Filed June 28, 1944

46 In the District Court of the United States
For the Northern District of Illinois
Eastern Division

* * (Caption—Civil Action No. 4670) * *

PETITION.

Now come the defendants, Joseph Ruzicka and Charles Ruzicka, by William Parker Ward, their attorney and

agent in their behalf and petition this Honorable Court as follows:

1. That they are several of the co-partners of the firm known as Seeley Dairy of the City of Chicago, County of Cook and State of Illinois; that they have heretofore filed an answer to the complaint of the plaintiff and an answer to the supplemental complaint of the plaintiff.

2. That this action arises under the provisions of the Agricultural Marketing Agreement Act of 1937 and amendments; that said act provides for an administrative determination by persons or parties to whom said act and amendments is or is sought to be applied; that by virtue of the said provisions your petitioners have heretofore on the 28th day of October, 1943, and again on the 29th day of April, 1944, presented their petition in writing to Claude R. Wickard, Secretary of Agriculture, United States of America, requesting an administrative determination through a hearing as to the matters in controversy between the plaintiff and these defendants; that the receipt of said petition has been acknowledged by the office of the solicitor of the United States Department of Agriculture, at Washington, D. C., and has been designated as AMA Docket No. 4122; that to date hereof no hearing has been held and no date has been set for the said hearing although request has been made for a hearing at the earliest time possible; that said administrative proceedings are for the purpose of securing a complete administrative determination of the validity, propriety and applicability of the Order No. 41 of the Secretary of Agriculture referred to in the plaintiff's complaint herein.

3. That said proceedings before the Secretary of Agriculture will result in the only fair determination of the rights according to the provisions of said act; that a determination in this court of such matters as marketing conditions, practices and principles would preclude petitioners from seeking the administrative relief guaranteed them by the said act; that said hearing will result in the determination of the applicability of the said order and act to these petitioners; that in the event said act and order is applicable to these petitioners said hearing will also afford a full and complete hearing as to the amount of monies, if any, due to the funds administered by the Market Administrator at Chicago, Illinois under the said Order No. 41.

47 Wherefore, your petitioners pray that said proceedings before this Honorable Court be stayed until such time as the Secretary of Agriculture has made a final determination after a full and complete hearing of the matters presented in the said petition under the administrative process provisions of the said act.

Joseph Ruzicka and
Charles Ruzicka
By *William Parker Ward*
William Parker Ward
their attorney

State of Illinois } ss.
County of Cook }

William Parker Ward being first duly sworn, on oath deposes and says that he is the attorney for the defendants, Joseph Ruzicka and Charles Ruzicka; that he is their duly authorized agent in this behalf; that he makes this affidavit on behalf of the defendants in the foregoing petition; that he has read the foregoing petition and knows the contents thereof; that the same is true of his own knowledge, except as to matters therein stated on information and belief, and as to those matters he believes them to be true.

William Parker Ward

Subscribed and sworn to before me a Notary Public, in and for the State of Illinois, County of Cook, this 26th day of June, 1944.

Helen Bozarth
Notary Public.

(Seal)

Filed Sept. 25, 1944

48 And afterwards on, to wit, the 25th day of September, 1944, came the Plaintiff by United States attorney and filed in the Clerk's office of said Court a certain Motion for Judgment on the Pleadings in words and figures following, to wit:

49 IN THE DISTRICT COURT OF THE UNITED STATES OF AMERICA

For the Northern District of Illinois

Eastern Division

* * (Caption—No. 4670) * *

MOTION FOR JUDGMENT ON THE PLEADINGS.

The plaintiff, United States of America, moves for judgment on the pleadings against all of the above-named defendants, pursuant to the provisions of Rule 12(c) of the Federal Rules of Civil Procedure.

J. Albert Woll
J. Albert Woll,
United States Attorney,
Attorney for the Plaintiff.

NOTICE.

To.: William Parker Ward, Esquire
10 South LaSalle Street
Chicago, Illinois
Attorney for the Defendants.

Please Take Notice that I shall bring the above motion on for hearing on September 25, 1944, at 10:00 o'clock A. M., before the Honorable Michael L. Igoe, Judge of the District Court, in the courtroom usually occupied by him in the United States Court House, Chicago, Illinois.

J. Albert Woll
J. Albert Woll,
United States Attorney

50 State of Illinois }
County of Cook } ss

AFFIDAVIT OF MAILING.

Lawrence E. Schuble, being first duly sworn on his oath, doth depose and say that he is employed as a Messenger in the office of the United States Attorney at Chicago, Illinois; that on the 21st day of September, 1944, he placed a copy of the foregoing Motion for Judgment on the Pleadings, together with Notice thereon, in a Government-franked envelope, addressed to the following:

William Parker Ward, Esquire
10 South LaSalle Street
Chicago 3, Illinois

and that he placed said envelope, so addressed and containing the aforementioned documents, in the United States mail chute located in the United States Court House, Chicago, Illinois, on said date.

Lawrence E. Schuble

Subscribed and sworn to before me this 21st day of September, 1944.

John Peter Lulinski
(Seal) *Notary Public.*

51 And afterwards on, to wit, the 16th day of October, 1944, came the Defts. Joseph Ruzicka and Charles Ruzicka, by their attorney and filed in the Clerk's office of said Court a certain Motion for Rule on Plaintiff, etc. in words and figures following, to wit: Filed Oct. 16, 1944

52 IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois
Eastern Division

* * (Caption—No. 4670) * *

MOTION.

Now comes the defendants, Joseph Ruzicka and Charles Ruzicka, several of the partners of the firm of Seeley Dairy and moves the Court for a rule on the plaintiff to

file its reply within such time as may be determined by the Court to the Answer of Joseph Ruzicka and Charles Ruzicka to the Supplemental Complaint filed the 8th day of May, 1944, wherein the plaintiff shall be required to make full and complete Answer to the affirmative allegations of the said Answer to the said Supplemental Complaint.

Joseph Ruzicka and Charles Ruzicka
several of the partners of the firm
Seeley Dairy

By William Parker Ward
Their Attorney.

Filed Oct. 16, 1944

53 And on the same day, to wit, the 16th day of October, 1944, came the Defts. Joseph Ruzicka, et al. by their attorney and filed in the Clerk's office of said Court a certain Motion for Rule on Plaintiff, etc., in words and figures following, to wit:

54 IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois
Eastern Division

(Caption—No. 4670)

MOTION.

Now comes the defendants, Joseph Ruzicka and Charles Ruzicka, several of the partners of the firm of Seeley Dairy, and moves the Court as follows:

1. For a rule upon the plaintiff to file within such time as may be fixed by this Court a list of the names and present addresses of each and every auditor or accountant of the Milk Market Administrator at Chicago, Illinois, who inspected, audited or investigated the books and records of these several defendants and of the auditors or accountants who summarized said reports used in billing by said Market Administrator of any monies allegedly due funds administered by him.

2. For a rule on the plaintiff to file within such time as may be fixed by the Court a list of the names and addresses of the persons who collected, prepared and made tests as to the butter fat content of the milk and milk

products of these several defendants for the period of time alleged in said supplemental complaint.

Joseph Ruzicka and Charles Ruzicka
several of the partners of the firm
Seeley Dairy
By William Parker Ward
Their Attorney.

55 And on the same day, to wit, the 16th day of October, 1944, came the Defts. Joseph Ruzicka, *et al.* by their attorneys and filed in the Clerk's office of said Court a certain Motion for Rule on Plaintiff, etc. in words and figures following, to wit: Filed Oct. 16, 1944

56 IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois
Eastern Division
(Caption—No. 4670)

MOTION.

Now comes the defendants, Joseph Ruzicka and Charles Ruzicka, several of the partners of the firm of Seeley Dairy, and moves the court:

(1) For a rule on the plaintiff, within such time as may be fixed by the Court, to file a Bill of Particulars as to the amount of monies, if any, claimed by the plaintiff;

(2) For a rule on the plaintiff, within such time as may be fixed by the Court, to file a Bill of Particulars as to the amount of monies allegedly due, itemizing:

(a) The particular fund to which each amount is allegedly due;

(b) The months during which said alleged obligation arose as to each fund;

(c) The basis of the amount claimed as allegedly due each fund for each month thereof.

(3) For a rule on the plaintiff, within such time as may be fixed by the Court, to file a Bill of Particulars as to the butter fat content tests made by or under the direction of the Milk Market Administrator at Chicago, Illinois, as to any and all milk and milk products of these defendants for the period or periods during which the

plaintiff alleges monies due the funds administered by the Milk Market Administrator at Chicago, Illinois.

57 Joseph Ruzicka and Charles Ruzicka
several of the partners of the firm
Seeley Dairy
By William Parker Ward
Their Attorney.

Filed Oct. 16, 1944

58 And on the same day, to wit, the 16th day of October, 1944, came the Defts. Joseph Ruzicka, *et al.* by their attorney and filed in the Clerk's office of said Court a certain Motion to Strike, in words and figures following, to wit:

59 IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois
Eastern Division
(Caption—No. 4670)

MOTION.

Now comes the defendants, Joseph Ruzicka and Charles Ruzicka, several of the partners of the firm of Seeley Dairy and moves the Court to strike the motion for judgment on the pleadings heretofore filed on the 25th day of September, 1944, in accordance with the petition of Joseph Ruzicka and Charles Ruzicka.

Joseph Ruzicka and Charles Ruzicka
several of the partners of the firm
Seeley Dairy
By William Parker Ward
Their Attorney.

60 And on the same day, to wit, the 16th day of October, 1944, came the Defts. Joseph Ruzicka, et al. by their attorney and filed in the Clerk's office of said Court a certain Petition in words and figures following, to wit: Filed Oct. 16, 1944

61 IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois
Eastern Division
* * (Caption—No. 4670) * *

PETITION.

To the Honorable Judges of Said Court:

Now comes the defendants, Joseph Ruzicka and Charles Ruzicka, several of the partners of the firm Seeley Dairy, by William Parker Ward, and for their petition in support of their motion to strike the motion of the plaintiff for judgment on the pleadings, say as follows:

1. That your petitioners are several, but not all of the partners of the firm Seeley Dairy, of Chicago, Illinois; that there are three (3) partners who hold equal shares in the ownership of said firm; that one of said partners, Frank Ruzicka, is not a party to this action and has not been served with process for the reason that said Frank Ruzicka has been and is now a member of the armed forces of the United States, serving specifically with the United States Naval Reserve; that this court has heretofore, on the 25th day of June, 1943, protected the equitable interest of this third partner, Frank Ruzicka, by removing from the trial call this action based upon the original complaint filed herein; that said Frank Ruzicka has been continually since that date a member of the United States Naval
62 Reserve, serving outside of the territorial limits of the United States.

2. That said motion for judgment on the pleadings, heretofore filed by the plaintiff herein, seeks action against each and every one of the partners, including the partner not served and not a party to this action.

3. That plaintiff, by and through its supplemental complaint heretofore filed herein on the 10th day of April, 1944, alleges certain monies due, not to the plaintiff but

to the funds administered by the Milk Market Administrator at Chicago, Illinois.

4. That the answer of these two partners of the firm Seeley Dairy to the supplemental complaint filed on the 8th day of May, 1944, denies that any monies whatsoever are due to the said funds and inter alia states affirmative defenses and prays for counter relief against the plaintiff.

5. That no other pleadings to date hereof has been filed by the plaintiff or these defendants herein; that the record of this Court therefore presents an issue of fact as to the question of monies allegedly due these funds.

6. That by reason of said issue of facts as to the payment of monies, no judgment or decree in this Court of Equity could be entered upon pleadings at this date.

63 Wherefore, your petitioners pray that the motion to strike the motion of the plaintiff for judgment on the pleadings against all of the partners, including the partner not a party to this action, be sustained.

Joseph Ruzicka and Charles Ruzicka
several of the partners of the firm
Seeley Dairy.

By William Parker Ward
Their Attorney

Filed Oct. 16, 1944

64 And on the same day, to wit, the 16th day of October, 1944, came the Defts. Joseph Ruzicka, et al. by their attorneys and filed in the Clerk's office of said Court a certain Motion in words and figures following, to wit:

65 IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois
Eastern Division

* * (Caption—No. 4670) * *

MOTION.

Now comes the defendants, Joseph Ruzicka and Charles Ruzicka, several of the partners of the firm of Seeley Dairy, and moves the Court to set this cause for jury trial on a day certain as to the issues of fact concerning the payment of monies to the various funds administered by the Market

Administrator, in accordance with the petition of these defendants.

Joseph Ruzicka and Charles Ruzicka
several of the partners of the firm
Seeley Dairy.

By William Parker Ward,
Their Attorney.

66 And on the same day, to wit, the 16th day of October, 1944, came the Defts. Joseph Ruzicka, et al. by their attorney and filed in the Clerk's office of said Court a certain Petition in words and figures following, to wit: Filed Oct. 16, 1944

67 IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois
Eastern Division
* * (Caption—No. 4670) * *

PETITION.

To the Honorable Judges of Said Court:

Now comes the defendants, Joseph Ruzicka and Charles Ruzicka, several of the partners of the firm Seeley Dairy, by William Parker Ward, and for their petition in support of their motion to set this cause for a jury trial as to the issues of fact concerning the payment of monies, say as follows:

1. That the plaintiff has heretofore filed its supplemental complaint against these two defendants alleging that certain monies were due to funds administered by the Milk Market Administrator; that these defendants have replied thereto denying that the monies are due to the said funds; that no other pleadings have been filed herein.

2. That by virtue of said Amended Complaint and Answer thereto, the allegations as to the payment of monies or as to monies due, presents an issue of fact.

3. That in accordance with the constitution of the
68 United States, and the statutes in such case made and provided, and rules of court, defendants are entitled to a jury trial as to the issues of fact concerning monies due; that pursuant to said right the defendants have heretofore filed their jury demand demanding trial by jury.

4. That these defendants are entitled to their day in court, including their right to a trial by jury, as to the monies allegedly due.

Wherefore, these defendants pray that this cause be set for jury trial on a day certain as to the issues of fact concerning payment of monies to the funds administered by the Milk Market Administrator.

Joseph Ruzicka and Charles Ruzicka
several of the partners of the firm
Seeley Dairy.

By William Parker Ward,
Their Attorney.

Filed Oct. 16, 1944

69 And on the same day, to wit, the 16th day of October, 1944 came the Defts. Joseph Ruzicka, et al by their attorney and filed in the Clerk's office of said Court a certain Motion in words and figures following, to wit:

70 IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois
Eastern Division

* * (Caption—No. 4670) * *

MOTION.

Now comes the defendants, Joseph Ruzicka and Frank Ruzicka, several of the partners of the firm Seeley Dairy, and moves the Court for leave to withdraw the petition heretofore filed by them on the 28th day of June, 1944.

Joseph Ruzicka and Charles Ruzicka
several of the partners of the firm
Seeley Dairy.

By William Parker Ward,
Their Attorney.

71 And afterwards on, to wit, the 22nd day of January, 1945, there was filed in the Clerk's office of said Court certain Portions of Report of Proceedings and Stipulation in words and figures following, to wit:

72 Page 1.

IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois,
Eastern Division, at Chicago.

* * (Caption—No. 4670.) * *

Report of Proceedings at the hearing of the above entitled cause before the Honorable Michael L. Igoe, Judge of said Court, on the 16th day of October, 1944, at 2:00 o'clock P. M.

Present:

Mr. J. Albert Woll,
United State District Attorney, By
Mr. John P. Lulinski,
Asst. United States Attorney;
Mr. John J. Toohey, and
Mr. Jesse L. Cook,
On behalf of the Government;
Mr. Wm. Parker Ward,
On behalf of the Defendants.

Page 2.

The Clerk: Number 4670, United States of America vs. Joseph Ruzicka, Frank Ruzicka and Charles Ruzicka.

The Court: Proceed.

Mr. Lulinski: I believe there are some preliminary motions that should be disposed of before we get into the argument in chief on the Government's motion on the pleading.

The Court: What are they?

73 Mr. Lulinski: I served notice on them. I don't remember. There are some seven motions filed of the various named defendants.

Mr. Ward: This is here, Your Honor, on the trial call, on Defendant's motion to stay, during the pendency of the administrative proceedings and on the Plaintiff's motion for judgment on the pleadings, and now I served notice, as counsel states, and I would present several motions to Your Honor this morning, or this afternoon. I don't know whether you want to take his or if you want to take my motion before his, well and good. If you would rather take his—

The Court: This motion is on the merits?

Mr. Lulinski: That is right, Your Honor. These are various motions for a bill of particulars.

Mr. Ward: All right, starting with the first one,

Page 3. Lines 1 to 15, inclusive.

The Court: What is that?

Mr. Ward: The first is a motion by the two defendants, the two partners who have been served for leave to withdraw petition filed by them on the 28th day of June, 1944.

The Court: What is that?

Mr. Ward: That was a petition to stay the court proceedings pending an administrative determination of certain points involved. I am not urging that point. I am asking leave to withdraw that petition.

The Court: Is there any objection to that?

Mr. Lulinski: No objection on the part of the Government, Your Honor.

The Court: That motion may be granted.

Mr. Ward reads defendants' motion asking rule on plaintiff to file Bill of Particulars and motion for rule on plaintiff to file reply to answer (Items 8 and 6, respectively, in appellants' designation of record on appeal).

74 Page 5. Lines 6 to 24, inclusive.

Mr. Ward: I do not know if there is any objection to that.

Mr. Lulinski: There is an objection to that Your Honor.

Mr. Ward: In my supplemental answer to the supplemental complaint I have set out various affirmative defenses that we are not at issue. I want some reply to that either in the nature of motions or in the nature of an answer. We certainly can't try a case until we see the issues which are presented, or until we have issues.

The Court: This was filed last May?

Mr. Ward: That is right, Your Honor. No Answer has been filed since then.

The Court: Where under the rules do they have to file an Answer?

Mr. Lulinski: That is the point involved, Your Honor.

Mr. Ward: Well, Your Honor, here, just in this,

Page 6. Lines 1 to 16, inclusive.

in the ordinary rules of proceeding in a court where a man sets up an affirmative defense and prays for affirmative relief, I think he is entitled to know whether they will either admit it or deny it.

The Court: There isn't anything in our rules that says he has to file an Answer.

Mr. Ward: I think it is discretionary with the Court at this time whether there should be an Answer.

The Court: He says you have been laboring under that misapprehension of coming in here and asking for the exercise of discretion. That motion will be overruled.

Mr. Ward: The plaintiff has had quite a while too, Your Honor. May I take exception to that?

The Court: Yes.

75 Mr. Ward reads defendants' motion to strike motion on the pleadings and defendants' petition in support of motion (Item 9 and 10, respectively in appellants' designation of record on appeal).

Page 9. Lines 11 to 24, inclusive.

Mr. Ward: Now, Your Honor, I am prepared to argue that point in detail this afternoon to show that the motion for judgment cannot be entered where there is an issue of fact present or presented by the record, especially where there is no general denial on file.

The Court: That is the whole issue, as to whether they are entitled to summary judgment?

Mr. Lulinski: I object to the motion.

Mr. Ward: I beg your pardon.

Mr. Lulinski: Go ahead.

Mr. Ward: It is not a motion for summary judgment. There is no affidavit in support. This is only a motion for judgment unsupported by even a petition.

Page 10. Lines 1 to 15, inclusive.

The Court: Yes.

Mr. Lulinski: This is a motion for judgment on the pleadings, pursuant to the rule itself.

The Court: Isn't that a summary judgment?

Mr. Lulinski: In effect a summary judgment.

The Court: It is the same thing. It is a motion for judgment upon the pleadings.

Mr. Ward: Judge, what sort of an order can be entered upon the issue except to declare the present state of proceedings is at issue?

The Court: This matter that you are now discussing is what he has come here to discuss.

Mr. Ward: I am striking his motion.

76 The Court: Set that aside for a moment. What else?

Mr. Ward reads defendants' motion asking rule on plaintiff to file list of auditors and testors (Item 7 in appellants' designation of record on appeal).

Page 11. Lines 15 to 24, inclusive.

Mr. Ward: Your Honor, this is a preliminary motion, preliminary to the trial. I want to know the names and addresses of those people. I will either take their deposition or I will subpoena them into court. They are the people who will testify against my client in the trial of this cause. I want as a matter of pre-trial preparation to have their names and addresses. This answer will revolve principally upon the payment of moneys, the amount of moneys which is due.

Page 12. Lines 12 to 20, inclusive.

Mr. Lulinski: May it please the Court, the Government's objection to the motion is founded upon the fact there is no provision within the federal rules of civil procedure providing for a rule to show cause such as filed here. Apparently the defendants are here for the purposes of discovery. We have three rules, the only federal rules of civil procedure which I believe are for discovery. They are Rules 34, 35 and 36.

Page 13. Lines 10 to 24, inclusive.

Mr. Lulinski: There is no provision, as I have heretofore stated in our Rules permitting the defendant or plain-

tiff to come in for discovery or a Rule to show cause. It must come in on one of the three special methods that we have, or otherwise file his depositions either orally or written for the purpose of discovery.

Mr. Ward: This is not a Rule to show cause, because you understand, Your Honor,—

The Court: This is a Rule upon a specific statement of claim.

77 Mr. Ward: It might be considered that. It might also be considered a motion in the nature of interrogatories. If counsel objects to it in this form I will serve it in the nature, in the form of interroga-

Page 14. Lines 1 to 18, inclusive.

tories to find out the names and addresses of these people.

The Court: What you want is discovery. That is why you should proceed under the Federal Rules.

Mr. Ward: I will withdraw that motion.

The Court: It is withdrawn then.

Mr. Ward: All right.

The Court: What is the next?

Mr. Ward: The next one, excuse me, Your Honor. I think I have evidently skipped one. There should be one here in its natural order. I do not find it.

The Court: A long one?

Mr. Ward: It is a motion for a bill of particulars, Your Honor.

The Court: Rule on the plaintiff to file a bill of particulars?

Mr. Ward: I see I got them in the reverse order here in front of me, Your Honor.

Mr. Ward reads defendants' motion asking rule on plaintiff to file Bill of Particulars (Item 8 in appellants' designation of record on appeal).

Page 16. Lines 16 to 24, inclusive.

The Court: That motion is overruled.

Mr. Ward: I would just like to remain on that point and take exception to it. On that point in an equity court I would be entitled to it, especially when it involves the administration of funds for separate periods.

The Court: You can get all that information by filing interrogatories.

78 Mr. Ward: All right, Your Honor. Now the next

Page 17. Lines 1 to 4, inclusive.

motion is, of course, predicated upon the two previous motions. Of course, you can see the point of it as soon as I bring it to Your Honor's attention. Mr. Ward reads defendants' petition in support of motion for jury trial (Item 12 in appellants' designation of record on appeal).

Page 18. Lines 17 to 24, inclusive.

The Court: You say pursuant to the right set-up here, the defendants have filed their jury demand. Where did they file it?

Mr. Ward: It was filed here on the day that the appearance was filed, Your Honor.

The Court: Where is it?

Mr. Ward: It is in the records of the Clerk of the Court. I have a copy of it here.

Page 19. Lines 1 to 19, inclusive.

The Court: I don't know why you are going to make another demand.

Mr. Ward: I have set it up here, asking that it be set for trial. Here is the demand, sets up the recital here.

The Court: I don't know where the demand is.

Mr. Ward: It says we demand a set date for a date for a jury trial.

Mr. Lulinski: I would point out the Government's observation relative to this particular motion. The proceeding, Your Honor, is an equitable proceeding. We are in equity. We are ask for equitable relief by way of mandatory injunction, by way of a restraining order.

The Court: You are not entitled to a jury.

Mr. Lulinski: That is right, Your Honor.

Mr. Ward: Your Honor, that jury demand was filed on October 13th, 1942.

The Court: You are not entitled to a jury.

79 Page 20. Lines 20 to 24, inclusive.

The Court: As I understand, this is a motion for judgment upon the pleadings?

Mr. Lulinski: That is right, Your Honor. That question will be taken up and shown in detail that these are affirmative defenses, and defenses set

Page 21. Lines 1 to 20, inclusive.

forth by the defendants and their particular answers to the supplemental complaint are not answers, and the Government is entitled to judgment on the pleadings, as they explain.

Mr. Ward: Judge, I will read you cases to show that a motion for judgment is not a proper proceeding to strike, as a matter of law.

Mr. Lulinski: It is not a question of striking. We admit the allegations. We admit the allegations. In the affirmative allegations of the answer we say: Admitting those allegations for the purposes of this motion for judgment, that notwithstanding we are entitled to judgment on the pleadings.

Mr. Ward: I don't think you mean exactly what you say, about your admitting any affirmative allegations. We complained about the equities of the plaintiff. If he admits that I am out of court right away. I have one other matter.

The Court: He says he is proceeding under—

Mr. Lulinski: Rule 12-C.

Page 57. Lines 16 to 19, inclusive.

The Court: Wasn't this case continued some months ago for the purpose of permitting them to proceed under the administrative office?

Mr. Ward: It was.

80 Page 114. Lines 11 to 24, inclusive.

The Court: What I have heard in this case, I think these defendants are just pursuing their dilatory tactics in order to prevent this matter coming to a final conclusion.

Now, we have a final motion here that you want to strike the motion for judgment on the pleading. That motion will be overruled.

As I understand your motion, Mr. United States Attorney, it is for judgment upon the pleadings.

Mr. Lulinski: That is right, Your Honor.

The Court: The only thing that is left to determine here is some mathematical process by which you will arrive at the amount of money due?

Page 115.

Mr. Lulinski: That is right, Your Honor.

The Court: They have filed returns. Upon those returns you can check by a pencil and by a mathematical process you can arrive at the amount that is due?

Mr. Lulinski: Yes.

The Court: There is a petition under the Rule of the Federal Practice here which gives summary judgment. Really the only thing left is to get at what the mathematical sum is that you are entitled to under a summary judgment?

Mr. Lulinski: That is right.

The Court: You are proceeding under Sub-Division C of Rule 12?

Mr. Lulinski: That is right.

The Court: Upon that your motion will be allowed. You draw the order up and bring it in here.

Mr. Ward: May I say this as to the amount of money which is due. Under these reports there is also another amount of money which is allegedly due by reason of
81 the audit and inspection of the defendants' business activities and their books and records. Now, on that we have squarely an issue as to whether

Page 116. Lines 1 to 7, inclusive.

or not there is any moneys due through error, but there must be a hearing and a judgment and I can't see how there can be any judgment where we are at issue as to whether the books and records have substantiated the sum of money due.

The Court: No. You are just trying to bring in another economic theory over here before a jury.

Mr. Ward: No, before the Court.

Page 117. Line 24.

The Court: Is there something else that has to be arrived

Page 118. Line 1—Lines 3 to 19, inclusive.

at before they should figure what is due there?

Mr. Lulinski: There is a verification of the audit adjustment which under the order provides he has five days to make payment. He never came in.

The Court: He has time to come in to object to the figure which you fixed?

Mr. Lulinski: He can come in today and object to the figure if he desires.

Mr. Ward: Judge, they would have to prove those figures. After all, they claim the reports were wrong, Judge. If they claim our reports are wrong, in equity they should prove where we are wrong.

The Court: In the proper proceeding, that is where you should act. You did not object.

82 Mr. Ward: They claim I have the burden of proving that my own reports are wrong.

The Court: It is up to you to come over there and set them aside.

Page 119. Line 22 and 23.

The Court: Now, we have to decide this law suit.

Mr. Ward: I wish to point out there has been no

Page 120. Lines 1 to 18, inclusive, and 22 and 23.

evidence introduced.

The Court: It is quite apparent there has been no evidence produced. He is making a motion upon the pleadings.

Mr. Ward: When will you submit the order? I would like to see the order.

Mr. Lulinski: You will be served with notice in advance.

Mr. Ward: I have a demand for a jury trial.

Mr. Lulinski: He withdrew the demand for a jury trial.

Mr. Ward: No, I did not withdraw the demand for a jury trial.

The Court: The second one?

Mr. Ward: No. That was entered.

Mr. Lulinski: No, that is not withdrawn.

The Court: Leave it in the file. He has already asked for a jury.

Mr. Ward: That is only the question as to the payment of money.

83 STIPULATION.

Attorney for the appellant and attorney for the appellee have examined the foregoing abstract of the stenographic report of the proceedings in the case of *United States of America v. Joseph Ruzicka, et al.*, Civil Action No. 4670, had before Judge Michael L. Igoe at 2:00 o'clock p. m.,

October 16, 1944, and having compared said abstract with the original stenographic reports of their respective court reporters agree that it represents an accurate report of rulings by the court that day, on the several motions and petitions of the defendant and the motion of the plaintiff for judgment on the pleadings, together with pertinent comment thereon of the court and counsel.

William Parker Ward,
Attorney for Appellants,

J. Albert Woll,
United States Attorney,
Attorney for Appellee.

Entered Oct. 16, 1944

85 And on the same day, to wit, on the 16th day of October, A. D. 1944, being one of the days of the regular October term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Michael L. Igoe, District Judge, appears the following entry, to wit:

86 In the District Court of the United States
Northern District of Illinois
Eastern Division

Monday, October 16, A.D. 1944.

Present: Honorable Michael L. Igoe,
District Judge

• • (Caption—No. 4670) • •

This cause this day coming on for hearing on the motion of the plaintiff for judgment on the pleadings and the motion of the defendants for leave to file certain motions come the parties by their attorneys and

It Is Ordered that the defendants be and they are hereby given leave to file instanter six (6) motions and two (2) petitions and that said motions and petitions be and they are hereby set for immediate hearing and the Court being fully advised in the premises

It Is Further Ordered that defendants' motion for leave to withdraw a petition heretofore filed herein on June 28,

1944 be and it is hereby granted and that defendants' motion for rule on plaintiff to file a reply to their answer to the supplemental complaint be and it is hereby overruled and

It Is Further Ordered that defendants' motion for rule on the plaintiff to file certain lists of auditors and accountants, etc. herein involved be and it is hereby overruled, that defendants' motion for a Bill of Particulars and defendants' motion to strike plaintiff's motion for judgment on the pleadings and the petition in support of said defendants' motion be and they are hereby overruled, that defendants' motion for a trial by Jury, together with the petition in support thereof be and they are hereby overruled and

It Is Further Ordered that the motion of the plaintiff for judgment on the pleadings be and it is hereby granted and that this cause be and it is hereby continued for the presentation by plaintiff of proposed findings of fact, conclusions of law and judgment order.

87 And afterwards, to wit, on the 20th day of October, A. D. 1944, being one of the days of the regular October term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Michael L. Igoe, District Judge, appears the following entry, to wit: Entered Oct. 20, 1944

88 In the District Court of the United States
For the Northern District of Illinois
Eastern Division

(Caption—Civil Action No. 4670)

The court having examined the pleadings in this cause, heard argument on the plaintiff's motion for judgment on the pleadings and having found that there are no issues of fact properly before this court, that the Agricultural Marketing Agreement Act of 1927, pursuant to which this action is brought, provides an adequate method of resolving such issues of fact as the defendants have attempted to raise in their answer, that the defendants having failed to avail themselves of the administrative remedy provided by said Act, may not raise such issues of fact before this court, there is no justiciable issue of fact before this court

and having concluded that the defendants' pleadings present no defense at law to the allegations contained in the complaint, the court enters herewith its findings of fact, conclusions of law and order for judgment:

FINDINGS OF FACT

1. This proceeding is brought by the United States of America upon the request of the Secretary of Agriculture of the United States to enforce compliance with the Agricultural Marketing Agreement Act of 1937.

2. Order No. 41 and amendments thereto have been duly issued by the Secretary of Agriculture of the United States in accordance with and pursuant to the Agricultural Marketing Agreement Act of 1937.

89 3. The defendants, Joseph Ruzicka, Frank Ruzicka and Charles Ruzicka, are individuals doing business as Seeley Dairy, with their principal place of business at 4754 South Seeley Avenue, Chicago, Illinois.

4. The defendant, Frank Ruzicka, has been in the military service of the United States of America since April 1, 1942 and has taken no part in the management or conduct of the business known as Seeley Dairy since that date.

5. The co-partners and defendants, Joseph Ruzicka and Charles Ruzicka, have operated the business known as the Seeley Dairy, continuously since April 1, 1942.

6. All milk and cream in the Chicago, Illinois, Marketing Area, as defined in Order No. 41, is in the current of interstate commerce or tends to directly burden and obstruct interstate commerce in milk or its products.

7. The defendants, Joseph Ruzicka and Charles Ruzicka, co-partners, doing business as Seeley Dairy, receive milk from producers or other handlers and dispose of such milk in the Chicago, Illinois, Marketing Area.

8. Order No. 41, as amended, requires each handler to report its receipts and utilization of milk for each delivery period and to make full payment, on or before the 16th day after the end of each delivery period, to the fund maintained by the Market Administrator known as the producer-settlement fund, of the amounts shown on such reports to be due from the handler to such fund.

9. The defendants, Joseph Ruzicka and Charles Ruzicka, doing business as Seeley Dairy, are indebted to the Market Administrator for the producer-settlement fund on the basis of their own reports, for the delivery periods

April 1, 1942 to February 29, 1944, inclusive, in the sum of $961.27 which sum they have refused to pay.

90 10. Order No. 41, as amended, requires that the Market Administrator shall verify all reports and payments of each handler by an audit of such handler's records and the records of any other handler or person upon whose disposition of milk the handler claims classification, and that when such audit discloses errors in payments to the producer-settlement fund, the Market Administrator shall bill the handler for any unpaid amount and the handler is required to make payment to the Market Administrator within five days.

11. The defendants, Joseph Ruzicka and Charles Ruzicka, doing business as Seeley Dairy, are indebted to the Market Administrator for the adjustment of errors in payments made to the producer-settlement fund, as disclosed by audits of the books, records and reports for the delivery period April 1, 1942 to August 31, 1943, inclusive, in the sum of $2,119.17 which sum they have refused to pay.

12. Order No. 41 requires that each handler shall pay to the Market Administrator on or before the 18th day after the end of each delivery period, a sum not exceeding 2 cents per hundredweight with respect to all milk purchased or received by him during such delivery period, the exact sum to be determined by the Market Administrator subject to review by the Secretary. The Market Administrator determined that beginning with January 1, 1942 the exact sum should be 1½ cents per hundredweight.

13. The defendants, Joseph Ruzicka and Charles Ruzicka, doing business as Seeley Dairy, have failed to pay their pro-rata share of the expense of administration of Order No. 41, as amended, and are indebted to the Market Administrator for the administration expense fund, for the delivery periods April 1, 1942 to February 29, 1944, in the sum of $100.17 which sum they have refused to pay.

14. Order No. 41, as amended, requires that in making payments to producers, each handler with respect to all milk received from each producer during each delivery

91 period, shall deduct 3 cents per hundredweight or such lesser amount as the Market Administrator shall determine to be sufficient, such determination to be subject to review by the Secretary of Agriculture and shall on or before the 18th day after the end of such delivery period, pay such deductions to the Market Administrator,

such monies to be expended by the Market Administrator for marketing services to such producers. The Market Administrator determined that commencing January 1, 1942 the exact sum to be deducted and remitted for such services should be 2 cents per hundredweight.

15. The defendants, Joseph Ruzicka and Charles Ruzicka, doing business as Seeley Dairy, have failed to pay to the Market Administrator for the marketing service fund such sums as they are required to deduct from payments to producers for marketing services and are indebted to the Market Administrator for the marketing service fund for the delivery periods August 1, 1943 to September 29, 1944, in the sum of $172.22.

16. The supplemental complaint prays that said defendants be required to make all payments found to be due and owing to the Market Administrator on the date of entry of judgment herein.

Conclusion of Law

1. The defendants' business of handling milk in the Chicago, Illinois, Marketing Area constitutes such defendants "handlers" as defined in Section 8(c) (1) of the Agricultural Marketing Agreement Act of 1937, and as defined in Order No. 41, as amended, and as handlers they are subject to the provisions of Order No. 41, as amended.

2. The defendants by their failure and refusal to pay the amounts shown to be due the producer-settlement fund established by the Market Administrator in accordance with the provisions of Order No. 41, as amended, by their failure to pay their pro-rata share of the cost of administering said Order, and by their failure to pay to the Market Administrator for marketing services, the amounts required by said Order to be deducted from payments to the defendants' producers, have violated the provisions of Order No. 41, as amended, and have continued to violate said Order since the complaint herein was filed.

92

3. The plaintiff is entitled to a mandatory injunction commanding the defendants, Joseph Ruzicka and Charles Ruzicka, to comply fully with Order No. 41, as amended, and particularly commanding said defendants to pay to the Market Administrator such sums as are set forth in the complaint and to pay such additional sums as have become due and owing to the Market Administrator from said defendants for delivery periods occurring between the

close of the last delivery period included in the complaint and the date of entry of judgment herein.

4. A permanent injunction should issue restraining the defendants, Joseph Ruzicka and Charles Ruzicka, doing business as Seeley Dairy, their agents, attorneys, employees, and assigns from handling milk in violation of Order No. 41, as amended.

ORDER FOR JUDGMENT

1. It is ordered that a mandatory injunction issue commanding the defendants, Joseph Ruzicka and Charles Ruzicka, doing business as Seeley Dairy, their agents, attorneys, employees and assigns to comply full with Order No. 41, as originally issued and as subsequently amended, regulating the handling of milk in the Chicago, Illinois, Marketing Area.

2. It is ordered that a permanent injunction should issue enjoining and restraining the defendants, Joseph Ruzicka and Charles Ruzicka, doing business as Seeley Dairy, their agents, attorneys, employees, successors and assigns from handling milk in the Chicago, Illinois, Marketing Area in violation of any of the provisions of Order No. 41, as amended.

Michael L. Igoe,
United States District Judge

93 And on the same day, to wit, on the 20th day of October, A. D. 1944, being one of the days of the regular October term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Michael L. Igoe, District Judge, appears the following entry, to wit:

Entered Oct. 20, 1944

94 IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois
Eastern Division
* * (Caption—Civil Action No. 4670) * *

FINAL JUDGMENT.

This cause having come on for hearing upon the plaintiff's motion for judgment on the pleadings, the court having examined the pleadings and heard the arguments of

counsel for the respective parties, having considered the case and filed its findings of fact and conclusions of law, It Is Ordered, Adjudged And Decreed:

1. That there is now owing by the defendants, Joseph Ruzicka and Charles Ruzicka, doing business as Seeley Dairy, hereinafter referred to as the defendants, to the Market Administrator of Order No. 41, as amended; for the producer-settlement fund on the basis of the defendants' filed reports for the delivery periods April 1, 1942 to and including February 29, 1944, the sum of $961.27; for the adjustment of errors in payments made to the producer-settlement fund, for the delivery periods from April 1, 1942 to and including August 31, 1943, the sum of $2,119.17; for the administration expenses, for the delivery periods from August 1, 1943 to and including February 29, 1944, the sum of $100.17; and for amounts required to be deducted from payments to producers and paid to the Market Administrator for marketing services, for the delivery periods from August 1, 1943 to February 29, 1944, the sum of $172.22.

2. That the defendants, their agents, attorneys, employees and assigns be and hereby are mandatorily enjoined and commanded to comply fully with Order No. 41, as amended, regulating the handling of milk in
95 the Chicago, Illinois, Marketing Area and the defendants and their assigns are commanded particularly,

(a) To pay to the Market Administrator, within fifteen days of the entry of judgment herein, the sum of $961.27 due and owing by the defendants to the Market Administrator for the producer-settlement fund, on the basis of the defendants' filed reports for the delivery periods from April 1, 1942 to and including February 29, 1944.

(b) To pay to the Market Administrator within fifteen days of the entry of judgment herein, the sum of $2,119.17 due and owing by the defendants to the Market Administrator for the adjustment of errors in payments made to the producer-settlement fund, for the delivery periods from April 1, 1942 to and including August 31, 1943.

(c) To pay to the Market Administrator within fifteen days of the entry of judgment herein, the sum of $100.17 now due and owing to the Market Administrator for administration expenses for the delivery

periods from August 1, 1943 to and including February 29, 1944.

(d) To pay to the Market Administrator within fifteen days of the entry of judgment herein, the sum of $172.22 now due and owing to the Market Administrator for marketing services for the delivery periods from August 1, 1943 to and including February 29, 1944.

(e) To pay to the Market Administrator within fifteen days of the entry of judgment herein, such additional amounts as are found to be due from the defendants to the Market Administrator as revealed by reports filed by said defendants for delivery periods occurring between the last delivery period set forth
96 in the complaint and the date of entry of judgment herein, and audits of the defendants' books and records performed by the Market Administrator subsequent to the filing of the supplemental complaint herein.

3. That a permanent injunction should issue enjoining and restraining the defendants, their agents, attorneys, employees, successors and assigns from handling milk in the Chicago, Illinois, Marketing Area in violation of any of the provisions of Order No. 41, as amended.

4. That jurisdiction over this cause be retained for the purpose of entering such further orders and judgment as may be necessary to afford full relief to the parties.

5. That judgment be entered against the defendants for the costs of this action to be taxed by the Clerk of the Court.

Michael L. Igoe
United States District Judge

Filed Nov. 17, 1944

97 And afterwards on, towit, the 17th day of November, 1944, came the Defts. Joseph Ruzicka, *et al.* by their attorney and filed in the Clerk's office of said Court a certain Notice of Appeal in words and figures following, to wit:

(Certificate of Mailing by Clerk Attached thereto)

98 IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois
Eastern Division

United States of America, *Plaintiff*, *vs.* Joseph Ruzicka, Frank Ruzicka and Charles Ruzicka, individually and as co-partners, doing business under the trade name of Seeley Dairy, *Defendants.*	Civil Action No. 4670

NOTICE OF APPEAL.

Notice is hereby given that Joseph Ruzicka and Charles Ruzicka, defendants, above named, hereby appeal to the United States Circuit Court of Appeals for the Seventh Circuit from the orders of the Court entered on the 16th day of October, 1944 denying certain motions of the defendants and sustaining plaintiff's motion for judgment on the pleadings and from final judgment entered in this cause on the 20th day of October, 1944.

William Parker Ward
Attorney for Joseph Ruzicka and Charles Ruzicka
William Parker Ward
10 So. LaSalle Street
Chicago 3, Illinois

Dated this 17th day of November, 1944.

(Certificate of Mailing by Clerk attached hereto)

99 IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois
Eastern Division

CERTIFICATE OF MAILING.

I, Roy H. Johnson, Clerk of the United States District Court, for the Northern District of Illinois, Eastern Division, keeper of the Seal and Records of said Court, do hereby certify that on the 20th day of November, 1944, in accordance with Rule 73 (b) of the Rules of Civil Procedure for District Courts of the United States, I did cause to be mailed a copy of the foregoing Notice of Appeal to the following attorneys of record:

Mr. J. Albert Woll, United States Attorney,
450 U. S. Court House,
Chicago 4, Illinois.

Roy H. Johnson
(Seal) Roy H. Johnson, *Clerk.*

100 And afterwards on, to wit, the 27th day of December, 1944 came the Defendants-Appellants by their attorneys and filed in the Clerk's office of said Court certain Statement of Points in words and figures following, to wit: Filed Dec. 27, 1944

101 IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois
Eastern Division

* * (Caption—Civil Action No. 4670) * *

STATEMENT OF POINTS.

The points upon which appellants intend to rely on this appeal are as follows:

1. The Court erred in denying appellants' motion for a rule on the appellee to file its answer to the affirmative defenses pleaded in appellants' answer and answer to the supplemental complaint.
2. The Court erred in denying appellants' pre-trial motion for a list of appellee's auditors, accountants and testors.

3. The Court erred in denying appellants' pre-trial motion for a bill of particulars as to the amount of monies and as to butter fat tests involved.
4. The Court erred in denying appellants' motion to strike appellee's motion for judgment on the pleadings.
5. The Court erred in denying appellants' motion to set this cause for trial by jury as to the issue of the amount of monies involved.
6. The Court erred in sustaining appellee's motion for judgment on the pleadings.
7. The Court erred in not granting a trial of all material issues of fact arising from the pleadings.
8. The Court erred in not requiring the appellee to prove all material allegations of its complaint
102 which were denied by the answer of the appellants.
9. The Court erred in not requiring appellee to furnish evidence by testimony or exhibit in support of its complaints as to allegations denied by the appellants.
10. The Court erred in not affording appellants a trial at which evidence of the appellee's could be met and evidence of the appellants' defenses could be produced.

William Parker Ward
William Parker Ward,
Attorney for Appellants, Joseph Ruzicka and Charles Ruzicka.

Filed Dec. 27, 1944

103 And on the same day, to wit, the 27th day of December, 1944, came the Parties-Appellants and Appellee by their attorneys and filed in the Clerk's office of said Court a certain Stipulation in words and figures following, to wit:

104 IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois
Eastern Division
(Caption—Civil Action No. 4670)

STIPULATION.

It is hereby stipulated by and between the plaintiff and the defendants, Joseph Ruzicka and Charles Ruzicka,

acting through their respective attorneys that the time in which the appellee may file its counter-designation of record on appeal be and the same hereby is extended to and including the 11th day of January, 1945.

It is further stipulated that the time for docketing this cause on appeal in the Circuit Court of Appeals for the Seventh Circuit and the same hereby is extended to and including the 22nd day of January, 1945.

J. Albert Woll
J. Albert Woll,
Attorney for Appellee

William Parker Ward
William Parker Ward,
Attorney for Appellants, Joseph Ruzicka and Charles Ruzicka.

105 And on the same day, to wit, on the 27th day of December, A.D. 1944, being one of the days of the regular December term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Michael L. Igoe, District Judge, appears the following entry, to wit: Entered Dec. 27, 1944

106 IN THE DISTRICT COURT OF THE UNITED STATES
Northern District of Illinois
Eastern Division

Wednesday, December 27, A.D. 1944.

Present: Honorable Michael L. Igoe, District Court.

* * (Caption—No. 4670) * *

On stipulation of the parties by their attorneys filed herein, It Is Ordered that the time of the defendants within which to docket their Record on Appeal be and it is hereby extended to January 22, 1945 and that the time within which to file counter-designation be and it is hereby extended to January 11, 1945.

Filed Jan. 11, 1945

107 And afterwards on, to wit, the 11th day of January, 1945 came the Appellants and Appellee by their attorneys and filed in the Clerk's office of said Court a certain Stipulation in words and figures following, to wit:

108 IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois
Eastern Division
* * (Caption—Civil Action No. 4670) * *

STIPULATION.

It is hereby stipulated by and between the United States of America, plaintiff, and the defendants, Joseph Ruzicka and Charles Ruzicka, acting through their respective attorneys that the time within which the United States of America, appellee, may file its counter-designation of record on appeal be and the same hereby is extended to and including the 21st day of January, 1945.

It is further stipulated that the time for docketing this cause on appeal in the Circuit Court of Appeals for the Seventh Circuit be and the same hereby is extended to and including the 31st day of January, 1945.

J. Albert Woll
J. Albert Woll
Attorney for Appellee

William Parker Ward
William Parker Ward
Attorney for Appellants, Joseph Ruzicka and Charles Ruzicka.

109 And on the same day, to wit, on the 11th day of January, A.D. 1945, being one of the days of the regular December, 1944, term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Michael L. Igoe, District Judge, appears the following entry, to wit: Entered Jan. 11, 1945

110 IN THE DISTRICT COURT OF THE UNITED STATES
Northern District of Illinois
Eastern Division

Thursday, January 11, A.D. 1945

Present: Honorable Michael L. Igoe, District Judge.

* * (Caption—No. 4670) * *

On stipulation of the parties by their attorneys filed herein, It Is Ordered that the time within which the Appellee may file counter-designation of record on appeal be and it is hereby extended to January 21, 1945 and the time within which to docket record on appeal be and it is hereby extended to January 31, 1945.

111 And on the same day, to wit, the 27th day of December, 1944, came the Defendants-Appellants by their attorney and filed in the Clerk's office of said Court a certain Designation in words and figures following, to wit: Filed Dec. 27, 1944

112 IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois
Eastern Division

* * (Caption—Civil Action No. 4670) * *

DESIGNATION OF RECORD.

Appellants designate the following portions of the record and proceedings to be contained in the record on appeal in this action:

1. Complaint.
2. Answer of Joseph Ruzicka and Charles Ruzicka.
3. Supplemental Complaint.

4. Answer of Joseph Ruzicka and Charles Ruzicka to Supplemental Complaint.

5. Motion for judgment on the pleadings by plaintiff.

6. Motion of defendants, Joseph Ruzicka and Charles Ruzicka for a rule on the plaintiff to file a reply to their answer to the Supplemental Complaint.

7. Motion of defendants, Joseph Ruzicka and Charles Ruzicka for a rule on the plaintiff to file a list of the names and addresses of the auditors, accountants, testors, etc., involved herein.

8. Motion of the defendants Joseph Ruzicka and Charles Ruzicka for a bill of particulars as to the amount of monies allegedly due and as to the butter fat content tests herein involved.

113 9. Motion of defendants, Joseph Ruzicka and Charles Ruzicka to strike the motion for judgment on the pleadings filed by the plaintiff.

10. Petition by the defendants, Joseph Ruzicka and Charles Ruzicka, in support of their motion to strike the motion of the plaintiff for judgment on the pleadings.

11. Motion of the defendants, Joseph Ruzicka and Charles Ruzicka to set the cause for jury trial as to the issues of fact concerning the payment of monies allegedly due.

12. Petition of the defendants, Joseph Ruzicka and Charles Ruzicka, in support of their motion to set the cause for jury trial as to the issues of fact concerning the payment of monies.

13. Minute order of the Court entered the 16th day of October denying;

a. Defendants' motion for a rule on the plaintiff to file a reply to their answer to the Supplemental Complaint.

b. Defendants' motion for a rule on the plaintiff to file certain lists of auditors and accounts, etc., herein involved.

c. Defendants' motion for a bill of particulars.

d. Defendants' motion and petition in support thereof to strike plaintiff's motion for judgment on the pleadings.

e. Defendants' motion and petition in support thereof to set the cause for trial by jury as to the amount of monies allegedly due;

and sustaining plaintiff's motion for judgment on the pleadings.

114 14. Findings of fact, conclusion of law and order for judgment entered the 20th day of October, 1944.

15. Order of final judgment entered the 20th day of October, 1944.

16. Notice of appeal filed by Joseph Ruzicka and Charles Ruzicka, defendants, to the United States Circuit Court of Appeals for the Seventh Circuit filed the 17th day of November, 1944.

17. Statements of points on which appellants intend to rely.

18. Stipulation of attorney for appellants and attorney for appellee for enlargement of time for counter designation of record by appellee and for docketing in the Circuit Court of Appeals on appeal.

19. Minute order of Court of the 27th day of December, 1944 enlarging the time for appellee's counter designation of record and for docketing on appeal.

20. This designation.

William Parker Ward,
William Parker Ward, *Attorney for Appellants, Joseph Ruzicka and Charles Ruzicka.*

115 And afterwards on, to wit, the 22nd day of January, 1945 came the Plaintiff-Appellee by its attorneys and filed in the Clerk's office of said Court a certain Designation of Record in words and figures following, to wit: Filed Jan. 22, 1945

116 In the District Court of the United States
For the Northern District of Illinois
Eastern Division

(Caption—Civil Action No. 4670)

DESIGNATION OF RECORD.

The appellee designates the following portions of the record of proceedings in the District Court of the United States for the Northern District of Illinois, Eastern Division, to be contained in the record on appeal in this action:

1. Petition of defendants Joseph Ruzicka and Charles Ruzicka, filed June 28, 1944, requesting a stay of proceedings before the District Court of the United States until final determination of their petition to the Secretary of Agriculture for an administrative hearing.

2. Motion of the defendants Joseph Ruzicka and Charles Ruzicka for leave to withdraw their petition, filed June 28, 1944, asking a stay of proceedings pending final determination of their petition to the Secretary of Agriculture for an administrative hearing.

3. Minute order of the court entered October 16, 1944, allowing defendants' motion for leave to withdraw petition for stay of proceedings, filed on June 28, 1944.

4. Portions of the report of proceedings in the above-entitled action, held before Judge Michael L. Igoe in the District Court of the United States, October 16, 1944, as shown on the abstract of said proceedings here annexed.

5. Stipulation between attorney for appellants and attorney for appellee for further enlargement of time for filing counter-designation of record by appellee and extension of time for docketing in the Circuit Court of Appeals.

6. Minute order of court entered January 11, 1945, enlarging the time for appellants' counter-designation of record and extending time for docketing on appeal.

7. This designation.

J. Albert Woll,
J. Albert Woll, *United States Attorney*
Attorney for Appellee.

117 Northern District of Illinois } ss:
Eastern Division }

I, Roy H. Johnson, Clerk of the District Court of the United States for the Northern District of Illinois, do hereby certify the above and foregoing to be a true and complete transcript of the proceedings had of record, and made in accordance with Designations filed by Defendants-Appellants and Plaintiff-Appellee in cause entitled: *United States of America* v. *Joseph Ruzicka, Frank Ruzicka and Charles Ruzicka,* individually and as co-partners, doing business under the trade name of Seeley Dairy, No.

4670, as the same appear from the original records and files thereof now remaining in my custody and control.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court at my office, in the City of Chicago, in said District this 29th day of January, A.D. 1945.

Roy H. Johnson,
Clerk.

(SEAL)

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

I, Kenneth J. Carrick, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages contain a true copy of the printed record, filed March 9, 1945, in: Cause No. 8759, THE UNITED STATES OF AMERICA, Plaintiff-Appellee, vs. JOSEPH RUZICKA AND CHARLES RUZICKA, Defendants-Appellants, as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this twenty-eighth day of January A. D. 1946.

[SEAL] (S) KENNETH J. CARRICK,

Clerk of the United States Circuit Court, of Appeals for the Seventh Circuit.

At a regular term of the United States Circuit Court of Appeals for the Seventh Circuit, held in the City of Chicago, and begun on the third day of October, in the year of our Lord one thousand nine hundred forty-four, and of our Independence, the one hundred and sixty-ninth.

8759

THE UNITED STATES OF AMERICA, PLAINTIFF-APPELLEE,

vs.

JOSEPH RUZICKA AND CHARLES RUZICKA, DEFENDANTS-APPELLANTS

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division

And, to-wit: On the thirtieth day of October 1945, there was filed in the office of the Clerk of this Court, the Opinion of the Court, which said opinion is in the words and figures following, to-wit:

In the United States Circuit Court of Appeals for the Seventh Circuit

No. 8759

October Term and Session, 1945

THE UNITED STATES OF AMERICA, PLAINTIFF-APPELLEE

vs.

JOSEPH RUZICKA AND CHARLES RUZICKA, DEFENDANTS-APPELLANTS

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division

October 30, 1945

Before EVANS, SPARKS, and KERNER, Circuit Judges.

EVANS, Circuit Judge. Defendants, by this appeal, assail the validity of a decree entered in this suit, which was brought to collect payment of sums allegedly due the Market Administrator under the Agricultural Adjustment Act (7 U. S. C. A. Sec. 601) and to enjoin defendants from violating an order of the Secretary of Agriculture known as Order No. 41. The decree was entered upon the pleadings. The attack is directed to the court's failure to permit defendants to present evidence which would show error in the Market Administrator's "verification" of defendants' reports.

Defendants are co-partners operating a dairy business in Chicago. The Market Administrator, checking the reports of these defendants, claims to have discovered errors which resulted in a finding by him of indebtedness of substantial sums which the defendants owed the Administrator's "producers-settlement milk fund." Defendants in their answer denied the existence of such errors and also denied that any sum was by them owing the Milk Fund established by the Market Administrator. They assert the verification was erroneous, improper, incomplete, and inaccurate.

Order No. 41, the order involved, is a comprehensive one made by the Secretary of Agriculture pursuant to the Agricultural Adjustment Act (7 U. S. C. A. Sec. 601 *et seq.*). It "regulates the handling of milk in the Chicago, Illinois marketing area." Among its provisions is one which calls for the payment, by the handler, of sums based upon the amount and quality of milk "produced or received" by him within seventy miles of the Chicago City Hall.

This order also creates an official called a Market Administrator, who, with employees whom he selects, administers the order.

Among other duties, said Market Administrator "shall verify all reports and payments of each handler, by an audit of such handler's records." "Each handler shall keep adequate records of receipts of milk and shall * * * make available to the Market Administrator * * * such records * * *" as will enable the Market Administrator to perform his duties and particularly to verify the receipts and disposition of the milk by him handled and verify payments to producers and weigh samples and test the butter fat content of the milk so handled in the Chicago area.

The Market Administrator "may maintain a suit in his own name against any handler for collection of such handler's pro rata share of expense * * *." The Market Administrator is required to establish and maintain a separate fund known as the "Producers Settlement Fund" into which he shall deposit all payments made by handlers and out of which he shall make all payments to handlers pursuant to Paragraphs (f) and (g) of this section. It also provides that the Market Administrator shall offset any such payment due to any such handler against payment due from such handler.

Important is the provision governing verification of reports and payments. "The Market Administrator shall verify all reports and payments of each handler by audit of such handler's records, and of the record of any other handler or person upon whose disposition of milk such handler claims classification * * *." Most significant is the provision of the statute which permits the handler to appeal to the Secretary of Agriculture for a modification of the Administrator's decision as to the amount due from or to the handler.

Determination of the instant appeal turns upon the correctness of the District Court's ruling that defendants were limited in their redress efforts to an appeal to the Secretary of Agriculture. In other words, the court held that no relief through appeal to the courts to secure a correction of the Market Administrator's verification of the handler's report was permitted.

Defendants did not pursue their right to seek a review of the Administrator's order by the Secretary of Agriculture, under Sec. 608c15, prior to the commencement of this action. Defendants did file such petitions with the Secretary of Agriculture, October 28, 1943, and April 29, 1944, after the commencement of this action. No hearing was had at the time defendants petitioned the trial court on June 28, 1944, for a stay of the instant proceeding pending such administrative determination.

Since the determination of this appeal turns upon the construction to be given the controlling statute, we quote it at length:

"Sec. 608a (6). The several district courts of the United States are hereby vested with jurisdiction specifically to enforce, and to prevent and restrain any person from violating any order, regulation, or agreement, heretofore or hereafter made or issued pursuant to this chapter, in any proceeding now pending or hereafter brought in said courts."

"Sec. 608a (8) The remedies provided for in this section shall be in addition to, and not exclusive of any of the remedies or penalties provided for elsewhere in this chapter or now or hereafter existing at law or in equity."

"Sec. 608c (15)

"(A) Any handler subject to any order *may* file a written petition with the Secretary of Agriculture, stating that any such order or any provision of any such order or any obligation imposed in connection therewith is not in accordance with law and praying for a modification thereof or to be exempted therefrom. He shall thereupon be given an opportunity for a hearing upon such petition, in accordance with the regulations made by the Secretary of Agriculture, with the approval of the President. After such hearing, the Secretary shall make a ruling upon the prayer of such petition which shall be final, if in accordance with law."

"(B) The District Courts of the United States * * * in any district in which such handler is an inhabitant, or has his principal place of business, are hereby vested with jurisdiction in equity to review such ruling provided a bill in equity for that purpose is filed within twenty days from the date of the entry of such ruling. * * * If the court determines that such ruling is not in accordance with law, it shall remand such proceedings to the Secretary with directions either (1) to make such ruling as the court shall determine to be in accordance with law, or (2) to take such further proceedings as, in its opinion, the law requires. The pendency of proceedings instituted pursuant to this subsection (15) shall not impede, hinder, or delay the United States or the Secretary of Agriculture from obtaining relief pursuant to section 608 (a) (6) of this title. Any proceedings brought pursuant to section 608a (6) of this title * * * shall abate whenever a final decree has been rendered in proceedings between the same parties, and covering the same subject matter, instituted pursuant to this subsection (15)."

Our problem presents the difficult question of the interpretation of a statute and the ascertainment of Congressional intent. Did Congress intend, when it inserted Sec. 608 in this act, to grant an exclusive relief and bar all other remedies?

The provisions of the statute contemplate (1) a remedy by the Government, in the district court, to enforce an order and to restrain violation of an order (Sec. 608a (6); (2) the right of the Government to institute enforcement proceedings is made not exclusive of other statutory or existing legal or equitable remedies (Sec. 608a (8)); (3) a handler feeling aggrieved by an order may seek review thereof with the Secretary of Agriculture, who shall give a hearing and his ruling is "final, if in accordance with law," and review is provided of his order by the District Court, in a suit in equity. If the Court finds the Secretary's decision is not in "accordance with law" it remands the proceeding with instructions; (4) a proceeding to enforce may be instituted by the Government, notwithstanding the pendency of an administrative proceeding under subsection (15), instituted by the handler, but the proceeding to enforce is to abate if a prior final decree is rendered in the proceedings growing out of the administrative proceeding.

It is argued in favor of an interpretation of the statute making the administrative proceeding the sole remedy to settle factual disputes: (1) The specific statutory set up is provided for the speedy and expert solution of those technical matters of administration of a specialized agricultural problem, and it must be inferred therefrom that it was intended that the administrative agency thus provided was to be exclusive. (2) Subsection 15 states the ruling of the Secretary "shall be final" subject to the review on questions of law therein provided. (3) The only limitation on the finality of his decree is that it must be in "accordance with law;" thereby eliminating review on issues of fact. Such limitation means determination in accordance with procedure provided by law and compliance with the substantive statutory law. It indicates there is not to be a review of fact issues.

On the other hand, (1) it is clear that by Subsection 608a (8) Congress did not intend to wipe out any existing equitable or legal remedy (at least in favor of the Government) despite the fact it provided specifically for enforcement proceedings. This saving clause of existing remedies tends to substantiate the belief that Congress did not mean to make the special statutory remedies the only ones. (2) The statute provides that the handler "may" utilize the administrative remedy of review. Emphasis is on the word "may." It is argued, however, that the word "shall" could not have been used, otherwise the handler even though satisfied, would be forced to seek a review. (3) The statute recognizes the possibility of concurrency of remedies. The judicial one is not precluded by the administrative, except that it was to abate upon the prior final decree in the latter proceedings.

We confess to real doubt as to the true intent of Congress, but by virtue of that very doubt we conclude the aggrieved handler

should not be deprived of the right to a trial on the fact issue where an alleged erroneous imposition of bills for sums due is involved.

We reach our conclusion for several reasons. Had Congress meant to make subsection (15), the administrative review, the sole and exclusive remedy, it could easily have said so, and in the absence of such an express limitation we should not read it into the statute. Our system of jurisprudence stresses fairness and completeness of hearing of factual issues to all litigants. In this instance the Government is both the asserter and trier of facts. The handler is entitled to his day in court, even though he did not himself resort to another, affirmative, remedy which was at his disposal. He might have been limited to a hearing by the official who is investigator, charger, and trier-of-fact. It was within the power of Congress to so legislate. But unless Congress has clearly denied access to judicial review of fact findings of the market administrator, we hold the court should be and is open to him.

Our search for precedent* for guidance has not been entirely convincing or satisfactory. We find a bit of light in the statement of the Supreme Court in *Stark* v. *Wickard*, 321 U. S. 288, 308:

> "The Act bears on its face the intent to submit many questions arising under its administration to judicial review. Secs. 8a (6), 8c (15) (A) (B). It specifically states that the remedies specifically provided in Sec. 8a are to be in addition to any remedies now existing at law or equity. Sec. 8a (8). This Court has heretofore construed the Act to grant handlers judicial relief in addition to the statutory review specifically provided by Sec. 8c (15). On complaint by the United States, the handler was permitted by way of defense to raise issues of a want of statutory authority to impose provisions on handlers which directly affect such handlers. United States v. Rock Island Co-op., 307 U. S. 533, 560-61. In the Rock Royal case the Government had contended that the handlers had no legal standing in the suit for enforcement to attack provisions of the order relating to handlers. While we upheld the contention of the Government as to the lack of standing of handlers to object to the operating of the producer settlement fund on the ground that the handlers had no 'financial interest' in that fund, we recognized the standing of a proprietary handler to question the alleged discrimination shown in favor of the co-operative handlers."

*There have been decided in the year 1945 two cases involving appeal from a District Court review of the Secretary of Agriculture's determination under subsection (15).

The Court continues:

"With this recognition by Congress of the applicability of judicial review in this field, it is not to be lightly assumed that the silence of the statute bars from the courts an otherwise justiciable issue * * * Here, there is no forum, other than the ordinary courts, to hear this complaint. When, as we have previously concluded in this opinion, definite personal rights are created by federal statute, similar in kind to those customarily treated in courts of law, the silence of Congress as to judicial review is at any rate in the absence of an administrative remedy, not to be construed as a denial of authority to the aggrieved person to seek appropriate relief in the federal courts in the exercise of their general jurisdiction. When Congress passes an Act empowering administrative agencies to carry on governmental activities, the power of those agencies is circumscribed by the authority granted. This permits the courts to participate in law enforcement entrusted to administrative bodies only to the extent necessary to protect justiciable individual rights against administrative action fairly beyond the granted powers. * * * The terms of the Order are largely matters of administrative discretion as to which there is no justiciable right or are clearly authorized by a valid act. * * * Technical details of the milk business are left to the Secretary and his aides."

It may well be argued that this latter quotation negatives somewhat the support given by the previous quotation.

In United States v. Rock Royal Co-op., 307 U. S. 533, 560–61, the Court said:

"Although three of the defendants cannot complain of the benefits conferred upon cooperatives, for they are cooperatives, the defendant Jetter Dairy Company has standing to raise the issue of want of statutory authority to except cooperative handlers from the payment of the uniform price. It is a proprietary corporation, a handler of milk, required by the Order to pay uniform prices for the milk it purchases. * * * The cooperatives are excepted from the payment. The burden of payment is laid directly upon Jetter while others are excepted. * * *"

The case of Yakus v. U. S., 321 U. S. 414, gives us reason to pause, for in that case a defendant in a criminal case was denied leave to raise a defense of illegality of regulation, the violation of which was the basis of the criminal violation. The denial of leave to raise this defense was on the ground administrative remedies had not been exhausted. But in that case, involving the Emergency Price Control Act, the administrative remedy was by stat-

ute expressly made the exclusive remedy. The same was true of the Selective Service Act, Falbo v. United States, 320 U. S. 549.

The same is true in the case of Myers v. Bethlehem Shipbuilding Corp., 303 U. S. 41, where the Court held the District Court had no jurisdiction to enjoin the National Labor Relations Board from a hearing on unfair labor practices because the Labor Act provided that the hearing before the Board and review by the Court of Appeals was the exclusive remedy under the statute.

The most pertinent authority is the decision of the Ninth Circuit in La Verne Co-op. Citrus Assn. v. U. S., 143 F. 2d 415, which was a suit for injunction, instituted by the United States to enjoin defendants from handling lemons in violation of a certain order under the Agricultural Adjustment Act. The District Court refused to admit any of the offered evidence on the issue of unconstitutionality of the orders, on the ground that the Act provides for an exclusive administrative remedy which was pending. The Court of Appeals affirmed the decision. In this case the defendants admitted they had shipped an excessive quantity of lemons.

After due consideration we reach a contrary conclusion to that announced in the La Verne case.

The judgment is reversed with directions to proceed in accordance with the views herein expressed.

KERNER, Circuit Judge, dissenting. The law is now firmly settled that where a right of review is conferred by a statute the aggrieved party or litigant must invoke and exhaust the administrative remedy provided by the statute before he may resort to the courts. Anniston Mfg. Co. v. Davis, 301 U. S. 337; Sunshine Anthracite Coal Co. v. Adkins, 310 U. S. 381; Myers v. Bethlehem Shipbuilding Corp., 303 U. S. 41; and Yakus v. United States, 321 U. S. 414.

Section 8c (15) (A) of the Act provides a method or machinery for review whereby any handler subject to an order may file a petition with the Secretary of Agriculture stating that any obligation imposed in connection with an order is not in accordance with law; and pray for a modification thereof.

As I interpret this section of the Act, it prescribes an exclusive procedure for the determination of such issues; consequently, if the Market Administrator erred as to the defendants' obligations under the milk order to the producer-settlement, administrative expense and marketing service funds, then it was "an obligation imposed not in accordance with law" within the terms of the statute, and defendants are put to their statutory remedy. I believe that Congress intended the Secretary of Agriculture and not the courts to determine what sum, if any, is owing by a handler to the Milk Fund established by the Market Administrator, and pro-

vision was made for a review of the Secretary's action. See § 8c (15) (B).

A true Copy:
Teste:

Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.

And on the same day, to wit: On the thirtieth day of October, 1945, the following further proceedings were had and entered of record, to wit:

TUESDAY, OCTOBER 30, 1945.

Court met pursuant to adjournment.

Before: Hon. EVAN A. EVANS, Circuit Judge, Hon. WILLIAM M. SPARKS, Circuit Judge, Hon OTTO KERNER, Circuit Judge.

8758

THE UNITED STATES OF AMERICA, PLAINTIFF-APPELLEE

vs.

JOSEPH RUZICKA AND CHARLES RUZICKA, DEFENDANTS-APPELLANTS

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, reversed, and that this cause be, and the same is hereby, remanded to the said District Court with directions to proceed in accordance with the views expressed in the opinion of this Court filed this day.

And afterwards, to wit: On the ninth day of January 1946, the following further proceedings were had and entered of record, to wit:

WEDNESDAY, JANUARY 9, 1946.

Court met pursuant to adjournment.

Before: Hon. EVAN A. EVANS, Circuit Judge.

8759

THE UNITED STATES OF AMERICA, PLAINTIFF-APPELLEE

vs.

JOSEPH RUZICKA AND CHARLES RUZICKA, DEFENDANTS-APPELLANTS

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division

On motion of counsel for appellee, it is ordered that the issuance of the mandate of this Court in this cause be, and the same is hereby, stayed pursuant to Rule 25 of the Rules of this Court.

United States Circuit Court of Appeals for the Seventh Circuit

I, Kenneth J. Carrick, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing typewritten pages contain a true copy of the Opinion, filed October 30, 1945, the Judgment, entered on the same day and the Order staying issuance of Mandate, entered January 9, 1946, in: Cause No. 8759, The United States of America, Plaintiff-Appellee vs. Joseph Ruzicka and Charles Ruzicka, Defendants-Appellants, as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this twenty-eighth day of January A. D. 1946.

(S) KENNETH J. CARRICK,
Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.

U. S. GOVERNMENT PRINTING OFFICE: 1946

IN THE UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

8759

THE UNITED STATES OF AMERICA, PLAINTIFF-APPELLEE

vs.

JOSEPH RUZICKA AND CHARLES RUZICKA, DEFENDANTS-APPELLANTS

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division

And, to wit: On the thirteenth day of November 1945, there was filed in the office of the Clerk of this Court, a Petition for Rehearing, which said petition for rehearing is not copied herein.

And afterwards, to wit: On the twenty-third day of November 1945, there was filed in the office of the Clerk of this Court, an Answer to Petition for Rehearing, which said answer to petition for rehearing is not copied herein.

And afterwards, to wit: On the fifth day of January 1946, the following further proceedings were had and entered of record, to wit:

Saturday, January 5, 1946

Court met pursuant to adjournment.

Before Hon. EVAN A. EVANS, Circuit Judge; Hon. WILLIAM M. SPARKS, Circuit Judge; Hon. OTTO KERNER, Circuit Judge.

8759

THE UNITED STATES OF AMERICA, PLAINTIFF-APPELLEE

vs.

JOSEPH RUZICKA AND CHARLES RUZICKA, DEFENDANTS-APPELLANTS

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division

It is ordered by the Court that the Petition for a Rehearing of this cause be, and it is hereby, denied.

United States Circuit Court of Appeals for the Seventh Circuit

I, Kenneth J. Carrick, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing typewritten page contains a true copy of reference to petition for rehearing, filed November 13, 1945, reference to answer

to petition for rehearing, filed November 23, 1945, and order denying petition for rehearing, entered January 5, 1946, in Cause No. 8759, The United States of America, Plaintiff-Appellee vs. Joseph Ruzicka and Charles Ruzicka, Defendants-Appellants, as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this twenty-fifth day of February A. D. 1946.

[SEAL]

(S.) KENNETH J. CARRICK,
Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.

Supreme Court of the United States

Order allowing certiorari

Filed April 22, 1946

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice JACKSON took no part in the consideration or decision of this application.

U. S. GOVERNMENT PRINTING OFFICE: 1946